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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 341. 89.

MARGARET A. MUSE, HIPPOLITE FILHIOL, FRANCIS J. WATTS, ET AL., PLAINTIFFS IN ERROR,

*vs.*

THE ARLINGTON HOTEL COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED SEPTEMBER 24, 1895.

(16,031.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Margaret A. Muse, Hippolite Filhiol, Francis J. Watts, Harriet L. Watkins, Hattie S. Burch, Rowland M. Filhiol, Jerome Bres, Benedette H. Bress, James L. Sanford, Julia M. Watts, Mary A. Watts, Hardy H. Filhiol, Hiplite Bres, Alberta D. Sanford, by her mother and next friend, Mary A. Dempsey; Frank C. Bres, Ferdinan A. Fenner, Blanche F. Power, Robert W. Fenner, Lizzie S. Cochran, Robert R. Sanford, Mary A. Bres, Charles C. Sanford, and Alice F. South, heirs-at-law of Don Juan Filhiol, plaintiffs, and The Arlington Hotel Company, the defendant, a manifest error hath happened, to the great damage of the said Margaret A. Muse, Hippolite Filhiol, Francis J. Watts, Harriet L. Watkins, Hattie S. Burch, Rowland M. Filhiol, Jerome Bres, Benedette H. Bress, James L. Sanford, Julia M. Watts, Mary A. Watts, Hardy H. Filhiol, Hiplite Bres, Alberta D. Sanford, by her mother and next friend, Mary A. Dempsey; Frank C. Bres, Ferdinan A. Fenner, Blanche F. Power, Robert W. Fenner, Lizzie S. Cochran, Robert R. Sanford, Mary A. Bres, Charles C. Sanford, and Alice F. South, heirs-at-law of Don Juan Filhiol, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States ought to be done.

The Seal of the Circuit Court, U. S. A., Western Division of East. Dist. Ark.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of June, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

RALPH L. GOODRICH,
*Clerk of the Circuit Court of the United States of America for the Western Division, Eastern District of Arkansas.*

Allowed by—
JNO. A. WILLNER,
*U. S. Dist. Judge.*

1—341

The execution of the foregoing writ of error appears from the transcript herewith.

RALPH L. GOODRICH, *Clerk.*

2 Be it remembered that on the 25th day of July, 1894, came into the office of the clerk of the circuit court of the United States in and for the western division of the eastern district of Arkansas Margaret A. Muse *et al.*, by E. W. Rector, Esqr., their attorney, and filed therein a complaint against the Arlington Hotel Company; which complaint is in the words and figures following, to wit:

3 In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

MARGARET A. MUSE, HIPPOLITE FILHIOL, FRANCIS J. WATTS, Harriet L. Watkins, Hattie S. Burch, Rowland M. Filhiol, Jerome Bres, Benedette H. Bres, James L. Sanford, Julia M. Watts, Mary A. Watts, Hardy H. Filhiol, Hipolite Bres, Alberta D. Sanford, by Her Mother and Next Friend, Mary A. Dempsey; Frank C. Bres, Ferdinan A. Fenner, Blanche F. Power, Robert W. Fenner, Lizzie S. Cochran, Robert R. Sanford, Mary A. Bres, Charles C. Sanford, and Alice F. South, Heirs-at-law of Don Juan Filhiol,

*vs.*

ARLINGTON HOTEL COMPANY.

*Complaint at Law.*

The plaintiffs state that the- bring this suit against said defendant, The Arlington Hotel Company, a corporation organized under the laws of Arkansas and doing business at Hot Springs, in said State, and for cause of action say they are all non-residents of the State of Arkansas, and that all of them are citizens and residents of the United States of America except the plaintiff Alice F. South, who is a citizen and resident of the State of Coahuila, Mexico; that of said plaintiffs Margaret A. Muse, Hypolite Filhiol, Francis J. Watts, Har-iet L. Watkins, Roland M. Filhiol, Jerome Bres, Benedett H. Bres, Hattie S. Burch, James L. Sanford, Julia M. Watts, Mary A. Watts, Hardy H. Filhiol, Hypolite Bres, and Alberta D. Sanford, a minor, are citizens and residents of the State of Louisiana; Frank C. Bres, Blanche F. Power, Robert W. Fenner, and Ferdinand A. Fenner are citizens and residents of the State of Texas;

4 Lizzie S. Cochran, Robert R. Sanford, and Charles C. Sanford are citizens and residents of the State of Mississippi, and Mary A. Bres is a citizen and resident of the State of Illinois; that the- are the only heirs-at-law of Don Juan Filhiol, who died a citizen of the Territory of Louisiana in the year 1821; that they are owners in fee-simple of the following-described tract of land lying in the county of Garland, in the State of Arkansas, to wit: A certain one square league of land, with the hot springs, at the city

of Hot Springs, in said county and State, as the center of said league of land; that they claim title to said league of land as said heirs-at-law of the said Don Juan Filhiol, as follows:

First. On December the 12th, 1787, Don Juan Filhiol, Spanish commandant of the Ouachita, memor-alized the governor of the province- of Louisiana and West Florida for a grant of land, whereon the governor ordered a survey to be made, and on February 22nd, 1788, a grant for said land was executed and delivered by said governor to said Don Juan Filhiol, as will appear by reference to said grant, a translation of which is filed herewith, marked Exhibit "A," and made part hereof.

Second. On December the 6th, 1788, under the order of said governor of said province- of Louisiana and West Florida, the surveyor of said province- executed and delivered to said Don Juan Filhiol a certificate of survey of said land, as will appear by reference to said certificate of said survey, a translation of which is herewith filed, marked Exhibit "B," and made part hereof.

Third. On November the 25th, 1803, the said Don Juan Filhiol sold and conveyed said land by deed to his son-in-law, Narcisso Bourgeat, as will appear by reference to said deed, a translation of which is herewith filed, marked Exhibit "C," and made part hereof.

Fourth. On the 17th of July, 1806, the said Narcisso Bourgeat executed and delivered to the said Don Juan Filhiol a deed reconveying to him, the said Don Juan Filhiol, said land, as will appear by said deed, a translation of which is herewith filed, marked Exhibit "D," and made part hereof.

Said defendant is in the unlawful possession of a certain portion of said league of land, which portion is included in the Hot Spring Mountain reservation, in the city of Hot Springs, county of Garland, and State of Arkansas, the boundary lines of which reservation were established by the Hot Springs commission by public surveys in pursuance of the laws of the United States, said land so unlawfully possessed by said defendant being more particularly described as follows, to wit: Commencing at the quarter-section corner between sections thirty-two and thirty-three, in township two south, range nineteen west of the fifth principal meridian, in the city of Hot Springs, county of Garland, and State of Arkansas, and run thence north seventy-seven degrees and thirty minutes east four hundred and thirty-seven feet to a stone monument known as angle No. 33 of said Hot Spring Mountain reservation; thence along the line of said reservation, between angles thirty-three and thirty-four thereof, fifteen feet to the point of beginning; thence south five degrees east three hundred and twenty-two feet; thence north eighty-five degrees east seventy-six feet; thence north five degrees west ninety-nine and eight-tenths feet; thence north eighty-five degrees east sixty feet; thence north five degrees west fifty-seven feet; thence south eighty-five degrees west seventy-six feet; thence north five degrees west fifteen and eight-tenths feet; thence north eighty-five degrees east twenty-nine feet; thence north five

degrees west eighty-seven and eight-tenths feet; thence south
6 eighty-five degrees west thirty feet; thence north five degrees west twenty feet; thence north eighty-five degrees east one hundred and seventy-four and seven-tenths feet; thence north five degrees west fifty-three feet; thence south eighty-five degrees west forty-eight feet; thence north five degrees west eighty feet; thence north eighty-five degrees east fifty-four feet; thence north five degrees west one hundred feet to a point between angles numbering thirty-three and thirty-four of said Hot Spring Mountain reservation three hundred and twenty-none and seven-tenths feet from said angle number thirty-three; thence along said reservation line southwestward one hundred and thirty-eight and seven-tenths feet; thence south five degrees east one hundred and six feet; thence one hundred and thirty feet south eighty-five degrees west to the point of beginning, all courses being magnetic.

Said defendant has been in the unlawful possession of said portion of said land so particularly described as aforesaid since the third day of March, 1892, during all of which time the said plaintiffs have had title to said land, and still have, and the right to the possession thereof; and plaintiffs say that by reason of the said wrongful possession of said land by said defendant they have sustained damage in the sum of twenty thousand dollars. Wherefore they pray judgment for the recovery of said land so unlawfully held by said defendant and for the possession thereof and for said damages for the unlawful detention of the same.

E. W. RECTOR,
*Attorney for Plaint-ffs.*

STATE OF ARKANSAS, }
*County of Garland.* }

E. W. Rector says he is the attorney for the plaintiffs in this action, who are absent from the State of Arkansas, and that
7 he believes the statements contained in said complaint are true.

E. W. RECTOR.

Subscribed and sworn to befor- — this 23rd day of July, 1894.
[SEAL.] J. P. MELLARD,
*Notary Public.*

My commission expires December 11, 1894.

EXHIBIT A.

From the land archives.

The governor and intendent of the provinces of Louisiana and Florida West and inspector of troops, etc.:

Considering the anterior surveys made by the surveyor of this province, Don Carlos Trudeau, concerning the possession given to Don Juan Filhiol, commandant of this post of Ouachita, of a tract of land of one square league, situated in the district of Arcansas on

the north side of River Ouachita, at about two leagues and a half distance from said River Ouachita, and understanding that this land is to be measured so as to include the site or locality known by the name of Hot Waters, as is besides expressed by the figurative plan and certificate of said surveyor Trudeau above named, and recognizing this mode of measurement, we approve those surveys, using the faculty which the King has vested in us, and assign in his royal name unto the said John Filhiol the said league of land in order that he may dispose of the same and of the usufruct thereof as his own.

We give these presents under our own hand, sealed with the seal of our arms and attested by the undersigned secretary of His Majesty in this government and intendence.

8 In New Orleans on the 22nd of February, 1788.

(Signed) ESTEVEN MIRO.

By mandate of His Excellency:

(Signed) ANDRES LOPEZ ARMESTO.

Registered. 14262.

EXHIBIT B.

Don Carlos Trudeau, land and particular surveyor of the province of Louisiana, in consequence of a memorial signed on the 12th of December, of the year 1787, by Don Juan Filhiol, commandant of the post of Ouachita, and by order of His Excellency Don Estavan Miro, brigadier of the R. ex. gov., intendent of the province- of Louisiana, West Florida, etc., dated the 22nd of February, 1788, directing me to give possession to the aforesaid commandant of a tract of land of one league square, situated in the district of Arkansas, to include that spot known by the name of Warm Waters, and in conformity with the aforesaid order, I certify having measured in favor of the aforesaid commandant, Don Juan Filhiol, the league of land indicated in the memorial situation on the north side of the Ouachita river in the district of Arkansas, at about two leagues and a half distant from said river to be verified by the figurative plan which accompanies, in conformity with — of the 6th of present month of December and of the current year 1788.

(Signed) CARLOS TRUDEAU.

9 EXHIBIT "C."

Know all men by these presents, that I, John Filhiol, captain and commandant of the militia of this post have well and truly sold unto my son-in-law, Narcisso Bourgeat, a resident of this district, a tract of land eighty-four arpents front and forty-two in depth, on each side of the stream called the Source of the Hot Springs, about two leagues from where it flows into the Ouachita river, having the Source of the Hot Springs as a centre, the boundary lines on the east and west running parallel to their full depth, bounded on both sides by public lands, being the same property acquired by me by

grant from Stephen Miro, then governor of these provinces, under date of December 12th, 1787. I hereby sell unto the said Bourgeat the said property, with all its rights, ways, and servitudes, free from all incumbrances, for the sum of $1,200 cash to me in hand well and truly paid, for which I give him receipt; hereby waiving the exception "*non numerata pecunia*," and grant formal acquittance thereof*r*. Hereby giving full ownership unto said Bourgeat and transferring to him all my right and title to said property, with power to sell, exchange or barter the same at his option, and delivering the same to him by this deed, which I acknowledge as a real delivery, and relieve him from the resort to legal proceedings to obtain possession. I pledge my present and future property to the validity of this sale, and waive the rights of redemption and all laws in my favor.

And, *I*, Narcisso Bourgeat, being present, declare that I accept said property and receive it on the same terms and to the same extent as it has been sold to me, giving a full receipt for the same.

In testimony of which this deed is signed at Ouachita post, on November 25th, 1803.

I, Vinciente Fernandez Fejeiro, li-utenant in the Louisiana regiment of infantry, military and civil commandant of this post, declare that the parties to this deed are well known to me; that the deed was signed by Baron Bastorp and Joseph Pomet, as witnesses in the presence of Alex. Breard, Charles Bettin, Francisco Cavet, all residents of this neighborhood.

## Exhibit D.

I, the undersigned, Narcisso Bourgeat, do by these presents retrocede to John Filhiol a tract of land three leagues front and one in depth, situated on Bay*au* Darquelon, also a tract one league square, situated at the mouth of the Hot Springs creek where it flows into the Ouachita, being the same property which he sold to me by act passed before Vincent Fernandez Texeico, then commandant of Ouachita post, resell to him for the same sum for which he sold to me, and which sum he has repaid me, and for which I hereby give receipt and transfer to him the said property.

In testimony of which I have signed this deed at Pointe Coupee this 17th July 1806.

(Signed) NARCISSO BOURGEAT.

I certify that the present retrocession has been passed in my presence on the day and year above written.

J. POYDRAS,
*Judge of the Court of the Parish of Pte. Coupee.*

Endorsed: Filed and writ issued July 25th, 1894. Ralph L. Goodrich, cl'k.

11 UNITED STATES OF AMERICA,
*Western Division of the Eastern District of Arkansas.*

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the ninth day of April, anno Domini one thousand eight hundred and ninety-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, district judge, presiding and holding said court, the following proceedings were had, to wit, on Aug. 9, 1894:

MARGARET A. MUSE *et al.*
*vs.*
ARLINGTON HOTEL COMPANY.

Comes the defendant, by Rose, Hemingway and Rose, Esqrs., its attorneys, and files herein its demurrer to the complaint.

Which demurrer is as follows:

In the United States Circuit Court for the Eastern District of Arkansas, Western Division.

MARGARET A. MUSE *et al.*
*vs.*
THE ARLINGTON HOTEL COMPANY.

1. Comes said defendant and demurs to said complaint because the same does not state facts sufficient to constitute a cause of action.

2. Because it appears by said complaint that if the plaintiffs have any remedy on the facts stated, it must be pursued in a court
12 of equity and not in a court of law.

ROSE, HEMINGWAY AND ROSE,
*For Defendant.*

Filed August 9, 1894.

RALPH L. GOODRICH, *Clerk.*

13 UNITED STATES OF AMERICA,
*Western Division of the Eastern District of Arkansas.*

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 22nd day of October, anno Domini one thousand eight hundred and ninety-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, district judge, presiding and holding said court, the following proceedings were had, to wit, on Oct. 29, 1894:

MARGARET A. MUSE *et al.*
*vs.*
ARLINGTON HOTEL COMPANY.

Comes the defendant, by Rose, Hemingway and Rose, Esqrs., its attorneys, and files herein its motion to compel the plaintiffs to file herein the original exhibits.

Which motion is as follows:

Comes the said defendant and moves the court to require the plaintiffs to file in this court the originals of the exhibits referred to in the complaint herein.

ROSE, HEMINGWAY AND ROSE,
*For Defendant.*

Filed October 29, 1894.

RALPH L. GOODRICH, *Clerk.*

On October 31, 1894, as follows:

On this day came the defendant, by Rose, Hemingway and
14 Rose, Esqrs., its attorneys, and on their motion leave is given to the defendant to amend its demurrer herein by adding additional grounds of demurrer.

On November 5, 1894, as follows:

Now, on this day, came the defendant, by Rose, Hemingway and Rose, Esqrs., its attorneys, and, by leave of the court, files here its exceptions to the documentary evidence annexed to the complaint herein, and, on the motion of said defendant, it is now ordered that the plaintiffs produce and file in this court, within fifteen days from this date, the originals of the documents, copies of which are filed with the complaint herein.

Which exceptions to evidence are as follows:

Come- said defendant and excepts to the so-called land grant made an exhibit of evidence, marked Exhibit A to complaint, because:

1. The said instrument does not purport to be official or to come from any official depository.

And said defendant excepts also to the paper purporting to be a survey made by Don Carlos Trudeau, marked Exhibit B to the complaint, because:

1. It does not purport to be official.
2. It does not purport to come from any official depository.
3. Because it shows no such survey as is required by law to sustain the pretended Spanish grant set up in said complaint.

15 And the said defendant excepts to the instrument purporting to be a conveyance by John Filhiol, marked Exhibit C to said complaint, because:

1. The said deed does not purport to have been signed by the grantor therein.

2. Because the same does not describe the land set forth in the complaint herein.

3. The said deed does not purport to come from any official source or ever to have been filed in any office.

*4. It is not authenticated, as required by law.*

The defendant also excepts to the instrument purported to be a retrocession by Narcisso Bourgeat, a copy of which is marked Exhibit D to the complaint herein, because:

1. It is not authenticated in a manner required by law.
2. It does not purport to come from any official source.
3. It does not purport to have come from any official repository of conveyances of lands.
4. It does not describe the lands mentioned in the complaint.

ROSE, HEMINGWAY AND ROSE,
*For Defendant.*

Filed November 5, 1894.

RALPH L. GOODRICH, *Clerk.*

16 On November 20, 1894, as follows:

Now, on this day, come the plaintiffs, by E. W. Rector, Esqr., their attorney, and by leave of the court the- file here five photographs of documents referred to in their complaint, and also certified copy of Exhibits A and B filed with said complaint.

Which photographs are as follows:

(Here follow photographs marked pp. 17, 18, 19, 20, & 21, which are omitted in printing per stipulation.)

22 On December 17, 1894, as follows:

Come the plaintiffs, by E. W. Rector, Dan. W. Jones, and C. J. Boatner, Esqrs., their attorneys, and comes the defendant, by Rose, Hemingway and Rose, Esqrs., its attorneys, and it is ordered by the court that the demurrer to the complaint be set down for hearing on the second Monday of March, 1895.

23 UNITED STATES OF AMERICA,
*Western Division of the Eastern District of Arkansas.*

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 8th day of April, anno Domini one thousand eight hundred and ninety-five, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 18, 1895:

MARGARET A. MUSE *et al.*
*vs.*
ARLINGTON HOTEL COMPANY.

Come the plaintiffs, by C. J. Boatner, E. W. Rector, and Dan. W. Jones and McCain, Esqrs., their attorneys, and file herein their amended complaint and exhibits and offered to file motion to strike from the files the defendant's exceptions to plaintiffs' evidence of title, but on objection made by the defendant said motion was over-

ruled; to which the plaintiffs except; and comes the defendant, by Rose, Hemingway and Rose, Esqrs., and Joseph W. House, Esqr., district attorney, its attorneys, and files its demurrer to the amended complaint, and the same is heard, argued, and the argument hereof not being concluded, the same is continued until tomorrow morning.

Which motion to strike is as follows:

Come the said plaintiffs, by attorney, and move the court to strike from the files the exceptions filed by said defendant to plaintiffs' evidences of title because they say said exceptions are unauthorized by law and encumber the records.

24 C. J. BOATNER,
E. W. RECTOR,
DAN. W. JONES AND McCAIN,
*For Plaintiffs.*

Filed April 18, 1895.

RALPH L. GOODRICH, *Clerk.*

Which amended complaint and exhibits are as follows:

United States Circuit Court for the Eastern District of Arkansas, Western Division.

MARGARET A. MUSE, HYPOLITE FILHIOL, THOMAS J. WATTS, HARRIETT L. WATKINS, HATTIE B. BURCH, ROLAND M. FILHIOL, JEROME BRES, BENNEDETTE H. BRES, JAMES L. SANFORD, JULIA M. WATTS, MARY A. WATTS, HARDY H. FILHIOL, HYPOLITE BRES, ALBERTA D. SANFORD, by Her Mother and Next Friend, MARY A. DEMPSEY; FRANK C. BRES, FERDINAND A. FENNER, BLANCHE F. POWER, ROBERT W. FENNER, LIZZIE S. COCHRAN, ROBERT R. SANFORD, MARY A. BRES, CHARLES C. SANFORD, and ALICE F. SOUTH, Heirs-at-law of DON JUAN FILHIOL,

*vs.*

ARLINGTON HOTEL COMPANY.

*Amended Complaint.*

The plaintiffs state that they bring this suit against the defendant, The Arlington Hotel Company, a corporation organized under the laws of Arkansas and doing business at the city of Hot
25 Springs, in said State, and for cause of action say they are all non-residents of the State of Arkansas, and that all of them are citizens and residents of the United States of America, except the plaintiff Alice F. South, who is a citizen and resident of Coahuila, Mexico, and that of said plaintiffs Margaret A. Muse, Hypolite Filhiol, Francis J. Watts, Harriet L. Watkins, Roland M. Filhiol, Jerome Bres, Benedette H. Bres, Hattie S. Burch, James L. Sanford, Julia M. Watts, Mary A. Watts, Hardy H. Filhiol, Hypolite Bres, and Alberta D. Sanford, a minor, are citizens and residents of the State of Louisiana; Frank C. Bres, Blanche F. Power, Robert W. Fenner, and Ferdinand A. Fenner are citizens and resi-

dents of the State of Texas; Lizzie S. Cochran, Robert R. Sanford, and Charles C. Sanf*rod* are citizens and residents of the State of Mississippi, and Mary A. Bres is a citizen and resident of the State of Illinois; that they are the only heirs-at-law of Don Juan Filhiol, who died a citizen of the Territory of Louisiana, in the year 1821, intestate; that they are owners in fee-simple of the league of land, hereinafter described, lying in the county of Garland and State of Arkansas.

Plaintiffs state that their ancestor, Don Juan Filhiol, was born at Eymet, in Perigord, in the department of Dardongue, Arrondessement Bergerac, France, September 21, 1740; that he left France in 1763 and came to the island of San Domingo; that he left the island of San Domingo in 1779 and came to Philadelphia with the intention to join the Count D'Estaing and return with his squadron to France, but that divers events prevented his carrying out this intention and he changed his destination and arrived in New Orleans, Louisiana, in May, 1779; that having lost his vessel by a hurricane in the month of August, 1779, and the war between Spain and England having been declared, he remained in Louisiana and joined the volunteers when the Spaniards took Florida and Pensacola; that in the year 1783 he was appointed by the King of
26 Spain captain of the army and commandant of the militia and assigned to duty at the post of Ouachita, Louisiana, under instructions from Don Esteven Miro, the governor general of the province of Louisiana, dated at New Orleans.

That on December 12, 1787, said Don Juan Filhiol memorialized the governor of the province of Louisiana and West Florida for a grant of land, whereon the governor ordered said land applied for to be surveyed, and thereafter and before the 22nd day of February, 1788, Don Carlos Trudeau, the then surveyor general of the province of Louisiana, made a survey of said land in accordance with the law then existing, and made a report thereof with figurative plan and procès verbal in due form, in and by which said land was described as follows, to wit: A tract of land with a front of 84 arpens and a depth of 42 arpens on each side of the stream called "La Source d'eau Chaude," about two leagues distant from its entrance into the Ouachita, having the hot springs for its center, its limits extending in parallel lines east and west to its full depth and bounded on both sides by lands belonging to the Crown. Said survey, figurative plan, and procès verbal have been lost or destroyed and cannot be produced by plaintiff; and on February 22nd, 1788, the said Don Estevan Miro, as governor of said province, did make and deliver to the said Don Juan Filhiol a grant for a certain league of land, a description of which grant and of the land granted is hereinafter more fully described.

That said grant of land was made to their said ancestor, Don Juan Filhiol, while he was acting as commandant of the post of Ouachita, as a reward for his civil and military services in his capacity of commandant of that then important post; that the said Don Estevan Miro, in his capacity as governor general of Louisiana, was, by the Spanish colonial laws, vested with power to make

grants of land and convey by said grants the absolute fee-simple to the lands thus granted.

27 That said land so granted by the said Don Estevan Miro, as governor, on the 22nd of February, 1788, to the said Don Juan Filhiol consisted of a certain one square league of land with the hot springs at the city of Hot Springs, in said county and State aforesaid, as the centre of said league, the description, metes, and bounds of which league of land are more fully and accurately measured and described in said survey, figurative plan, and proces verbal of the said Don Carlos Trudeau, hereinbefore mentioned. Said grant is in the Spanish language, but when translated into the English language is as follows:

From the land archives.

The governor and intendent of the provinces of Louisiana and Florida West and inspector of troops, etc.:

Considering the anterior surveys made by the surveyor of this province, Don Carlos Trudeau, concerning the possession given to Don Juan Filhiol, commandant of the post of Ouachita, of a tract of land of one square league, situated in the district of Arcansas on the north side of River Ouachita, at about two leagues and a half distance from said River Ouachita, and understanding that this land is to be measured so as to include the site or locality known by the name of Hot Waters, as is besides expressed by the figurative plan and certificate of said surveyor Trudeau above named, and recognizing this mode of measurement, we approve those surveys, using the faculty which the King has vested in us, and assign in his royal name unto the said Julian Filhiol the said league of land in order that he may dispose of the same and of the usufruct thereof as his own.

We give these presents under our own hand, sealed with the seal of our arms and attested by the undersigned secretary of His Majesty in this government and intendence.

28 In New Orleans, on the 22nd day of February, 1788.

(Signed) ESTEVAN MIRO.

By mandate of His Excellency:

(Signed) ANDRES LOPEZ ARMESTO.

Registered.

That after the making and delivery of said grant to the said Don Juan Filhiol by the said Miro as governor of said province as aforesaid, to wit, on the 6th day of December, 1788, one Carlos Trudeaux, who was then land and particular surveyor of the province of Louisiana, made, executed, and delivered a certificate of measurement of said grant of land to the said Don Juan Filhiol, which certificate of measurement so made and delivered is in the Spanish language, but which when translated in the English language is as follows, to wit:

Don Carlos Trudeau, land and particular surveyor of the province of Louisiana, in consequence of a memorial signed on the 12th of December, of the year 1787, by Don Juan Filhiol, commandant of the post of Ouachita, and by order of His Excellency Don Estevan Miro, brigadier of the R. ex. gob., intendent of the province- of Louisiana, West Florida, etc., dated the 22nd of February, 1788, directing me to give possession to the aforesaid commandant of a tract of land of one league square, situated in the district of Arkansas, to include that spot known by the name of the Warm Waters, and in conformity with the aforesaid order, I certify having meas-red in favor of the aforesaid commandant, Don Juan Filhiol, the league of land indicated in the memorial situated on the north side of the Ouachita river in the district of Arkansas, at about two leagues and a half distant from said river to be verified by the figurative plan which accompanies in conformity with * * * of the 6th of the present month of December and of the current year 1788.

(Signed) CARLOS TRUDEAU.

29 That the making and delivery of said certificate by the said Trudeau was a delivery of the judicial possession of said land, and had the force and effect of segregating said tract from the public domain, and with the grant aforesaid vested full and complete title thereto in the said grantee.

Said plaintiffs further state that the said Don Juan Filhiol, their said ancestor, did sell and convey by deed the said league of land described herein to his son-in-law, Narcisso Bourgeat, on the 25th day of November, 1803; that said deed from said Don Juan Filhiol to the said Narcisso Bourgest was passed before Don Vinciente Fernandez Fejevio, lieutenant of the regiment of infantry of Louisiana and military and civil commandant of the district and jurisdiction of Ouachita, which deed was witnessed by the Senior Baron d'Bastrop and Don Jose Pomet, who signed the act in the presence of Don Alex. Breard and Don Carlos Bettin, all of whom were principal men in Ouachita at the date thereof; that said deed from the said Don Juan Filhiol to the said Narcisso Bourgeat is in the Spanish language, but which when translated in the English language is as follows, to wit:

Be it known to all to whom this act may come, that I, Don Juan Filhiol, captain in the army, commandant of the militia of this district, do authenticate that I really and effectuall- do sell to Narcisso Bourgeat, my son-in-law and resident of this district, a tract of land with a front of eighty-four arpints, and a depth of forty-two arpints on each side of the stream called " La Source d'eau Chaude " about two leagues distance from its entrance into the Ouachita, having the hot springs for its center; its limits extending in parallel lines east and west to its full depth, and bounded on both sides by lands belonging to the Crown—the same which belongs to me by virtue of a grant obtained from Senor Don Estevan Miro,

then governor of these provinces, dated the 12th day of
30 December of the year 1787. I sell the same to the above-named Bourgeat with all its ways of entrance and exits, uses, stated customs and servitudes, free from all charge and mortgage, for the price of one thousand two hundred dollars, good money, which he has paid me in cash, for which sum I acknowledge the receipt and to obviate the actual receipt thereof at this moment, I renounce the exception of *numerata pecunia* and do formally authenticate that I receive it; wherefore I abandon and relinquish all title, possession use, dominion of seign-ory I may have had or held in and to said tract of land and do grant unto and renounce in favor of, and transfer to this purchaser all such title and rights thereto, and in whom such a right and title may be that he may possess, sell, exchange, alienate, according to his own wish, and set forth in this writing which I pass in his favor, in testimony of real delivery of said property, so that it may be seen and understood that he acquires possession thereof without any other proof of which he is hereby relieved, and to secure him against eviction and insure the reality and perfection of this title I hereby affect and obligate thereto all the property I now have, or may hereafter have, and do hereby insert the clause of full guaranty, and do renounce all laws in my favor in general and in particular and being present at the passing of this act, I, the above-named Narcisso Bourgeat, accept the same—acknowledging to have purchased the said land in quantity and shape as herein sold to me, and which I accept as a delivery and formally acknowledge the possession, in testimony of which this deed is passed in the district of Ouachita on the 25th day of the month of November one thousand eight hundred and three.

I, Don Vincente Fernandez Texario, lieutenant of the regiment of infantry of Louisiana and military and civil commander
31 of this district and jurisdiction, certify that I know the contracting parties hereto, which act is affirmed by Senor Baron de Bastrop and Don Jose Pomet, who are present assisting, in the presence of Don Alexander Breard, Don Carlos Betin and Don Francisco Cavet all of whom are residents of this district.

The interlineation Cavet is part of this act, and erasure Betin is not.

JUAN FILHIOL.
NARCISSO BOURGEAT.

Done within my jurisdiction.

VINCENTE FERNANDEZ TEXARIO.

BARON DE BASTROP.
TN. POMET.

Which deed was immediately thereafter duly reported in the proper office of the province of Louisiana, in accordance with the law then existing, and was afterwards duly recorded in said office. Copies of said deed and of the deed of retrocession from said Bourgeat to said Filhiol, hereinafter mentioned, in the original Spanish language, properly certified by the officers in charge of them, attached thereto and endorsed thereon, are herewith filed, marked respect-

ively Exhibits X and Z, the originals being still kept on file as required by law.

That the said Narcisso Bourgeat retroceded the same lands sold to him as aforesaid by the said Don Juan Filhiol to the said Don Juan Filhiol by a deed passed before J. Poydras, judge of the court of the parish of Pointe Coupee, July 17th, 1806, and that their said ancestor, Don Juan Filhiol, never thereafter parted with his title to said land.

That the said deed from the said Narcisso Bourgeat to the said Don Juan Filhiol was filed for record and recorded in the office of the recorder of the parish of Pointe Coupee, in the State of
32 Louisiana, on the 17th of July, 1806, and that said deed, together with a certificate of recordation, *are* as follows, said deed being in the Spanish language, but here translated into the English language, to wit:

I, the undersigned Narcisso Bourgeat, retrocede by these presents to Monsieiur Jean Filhiol, a piece of land of three leagues front and one in depth, situated on the Bayou Darquelon; and one also of a league square situate at the Source of the Hot Water of the Ouachita, the which lands he sold to me by deed given before Don Vincente Fernandez Texario, commandant at that time at said Ouachita, and which I return to him for the same price and sum which he had parted with them to me and which he has reimbursed me, and therefore I hold him released in order that he may enjoy it appertaining as his right in belief of which I have signed at Pointe Coupee the seventeenth day of July one thousand eight hundred and six.

(Signed) NARCISSO BOURGEAT.

I certify that the presented retrocession has been made in my presence the same day as that above.

(Signed) J. POYDRAS,
*Judge of the Court of Pointe Coupee.*

STATE OF LOUISIANA, }
*Parish of Pointe Coupee.* }

I, the undersigned, deputy clerk and *ex officio* deputy recorder of mortgages, do hereby certify that the foregoing and within is a true copy of the original on file and of record in this office; which original has been duly recorded in this office on the 17th of July, 1806, under No. 2607.

Witness my official signature and seal of office this 1st day of June, 1889.

[SEAL.] A. J. DAYINS, *Recorder.*

33 Plaintiffs state that at the time of the making of said deeds the Spanish colonial law forbade any public officer having authority to receive acknowledgments of and pass deeds for the conveyance of lands to pass such deed or receive acknowledgment

thereof unless they knew that vendor had a title to the lands proposed to be sold.

Plaintiffs further state that their said ancestor, the said Don Juan Filhiol, in the year 1819 leased said Hot Springs to one Dr. Stephen P. Wilson for five years, and that shortly after making said lease to the said Wilson, to wit, in the year 1821, the said Filhiol died, as aforesaid, and that since the death of their said ancestor plaintiffs have always urged their title to said property and employed agents and attorneys to do so for them, but that during a large part of this interval they have been embarrassed by the want of said original grant for said land, the same having, without the knowledge of the heirs of said Don Juan Filhiol, been in the hands of one Resin P. Bowie, a distinguished lawyer, who made a specialty of Spanish grants, and after whose death, in 1843, the grant was mislaid; that often and repeated searches were made by the said plaintiffs for said grant, but that they failed to find it; that lately, to wit, on or about the — day of ——, 1883, said original grant from said Don Estevan Miro, the Spanish governor general of the province of Louisiana, to the said Don Juan Filhiol was found by Mrs. Matilda E. Moore, of Orleans parish, Louisiana, among the effects of her mother, who was the widow of the said Resin P. Bowie, and that said grant was delivered by said Matilda E. Moore to the plaintiff Margaret A. Muse, who is a daughter of Narcisso Bourgeat and Marie Barbe Filhiol and a granddaughter of Don Juan Filhiol, in the year 1883; that printed copies of the affidavits of Matilda E. Moore, Ellen M. Coates, Margaret Adelaide Muse, and Hyp-lite Filhiol as to the finding and delivery of said original grant and certificate of
34 measurement or survey of the said Carlos Trudeau, marked 1, 2, 3, and 4, are attached hereto and filed herewith.

Said plaintiffs state that they claim title to said league of land so granted by said Estevan Miro, as governor of said province, to the said Juan Filhiol, as the heirs-at-law of said Juan Filhiol, and they state that they will rely upon the following written evidences of their title for the maintenance of this action:

First. On the grant made by Don Estevan Miro, as governor of the province of Louisiana, on February 22nd, 1788, to Don Juan Filhiol, a *a* translation of which grant is filed herewith, marked "Exhibit A," and made part hereof.

Second. On the certificate of measurement or survey made by Carlos Trudeau, surveyor of the province of Louisiana, on December 6th, 1788, and delivered by him on that date to Don Juan Filhiol, a translation of which, marked "Exhibit B," is filed herewith and made part hereof.

Third. On the deed of said land made by Don Juan Filhiol to Narcisso Bourgeat on November 25th, 1803, a translation of which is herewith filed, marked "Exhibit C," and made part hereof.

Fourth. On the deed or retrocession of said land made by Narcisso Bourgeat to Don Juan Filhiol on the 17th of July, 1806, a translation of which deed or retrocession is herewith filed, marked "Exhibit D," and made part hereof.

Fifth. On the 3rd article of the treaty between the United

States of America and the French Republic of April 30th, 1803, which was ratified on the 21st of October, 1803.

Sixth. On the fifth amendment to the Constitution of the United States.

That said defendant is in the unlawful possession of a certain portion of said league of land, which portion is included in the Hot Springs Mountain reservation, in the city of Hot Springs, county of Garland, and State of Arkansas, the boundary lines of which
35 reservation were established by the Hot Springs commission by public surveys in pursuance of the laws of the United States, said lands so unlawfully possessed by said defendant being more particularly described as follows, to wit: Commencing at the quarter-section corner between sections thirty-two and thirty-three, in township two south, range nineteen west, of the fifth principal meridian, in the city of Hot Springs, county of Garland, and State of Arkansas, and run thence north seventy-seven degrees and thirty minutes east four hundred and thirty-seven feet to a stone monument known as angle No. 33 of said Hot Springs Mountain reservation; thence along the line of said reservation, between angles 33 and 34 thereof, fifteen feet to the point of beginning; thence south five degrees east three hundred and twenty-two feet; thence north eighty-five degrees east seventy-six feet; thence north five degrees west ninety-nine and eighth-tenths feet; thence north eighty-five degrees east sixty feet; thence north five degrees west fifty-seven feet; thence south eighty-five degrees west seventy-six feet; thence north five degrees west fifteen and eight-tenths feet; thence north eighty-five degrees east twenty-nine feet; thence north five degrees west eighty-seven and eight-tenths feet; thence south eighty-five degrees west thirty feet; thence north five degrees west twenty feet; thence north eighty-five degrees east one hundred and seventy-four and seven-tenths feet; thence north five degrees west fifty-three feet; thence south eighty-five degrees west forty-eight feet; thence north five degrees west eighty feet; thence north eighty-five degrees east fifty-four feet; thence north five degrees west one hundred feet to a point between angles numbering 33 and 34 of said Hot Springs Mountain reservation three hundred and twenty-nine and seven-tenths feet from said angle No. 33; thence along said reservation line south westward one hundred and thirty-eight and seven-
36 tenths feet; thence south five degrees east one hundred and six feet; thence one hundred and thirty feet south eighty-five degrees west to the point of beginning, all courses being magnetic.

The said defendant has been in the unlawful possession of said portion of said land so particularly described as aforesaid since the third day of March, eighteen hundred and ninety-two, during all of which time the said plaintiffs have had title to said land, and still have, and the right to the possession thereof, and plaintiffs say that by reason of the said wrongful possession of said land by said defendant they have sustained damages in the sum of twenty thousand dollars. Wherefore they pray judgment for the recovery of said land so unlawfully held by said defendant and for the posses-

sion thereof, and for said damages for the unlawful detention of the same.

(Signed) C. J. BOATNER,
DAN. W. JONES,
E. W. RECTOR,
*Attorneys for Plaintiff.*

STATE OF ARKANSAS, }
*County of Pulaski.* }

E. W. Rector says that he is the attorney for the plaintiffs in this suit, who are absent from the State of Arkansas, and that he believes the statements contained in said complaint are true.

E. W. RECTOR.

Subscribed and sworn to before me the 18th day of April, 1894.
RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

For Exhibit "A," referred to in amended complaint, see page 7.

37 For Exhibit "B," referred to in amended complaint, see page 8.

For Exhibit "C," referred to in amended complaint, see page 9.

For Exhibit "D," referred to in amended complaint, see page 10.

Endorsed: Filed April 18th, 1895. Ralph L. Goodrich, clerk.

38 EXHIBIT X TO COMPLAINT.

(Copy.)

MONROE, LOUISIANA, *June* 7, 1890.

Hon. John McEnery, New Orleans, Louisiana.

DEAR SIR: In reply to yours of the 4th instant I herewith enclose and return copy with amended certificate, &c. I am unable to certify as to the reason why the deed was not recorded earlier, but I notice a petition from L. F. Lamy, parish judge, to president and members of the police jury of Ouachita parish under date of June 5th, 1832, setting forth that original deeds remain unrecorded in the office of the recorder, and asking that body to make some provision for having them placed of record, being written in French and Spanish, and the difficulty of finding a competent person to record them, I presume, was the cause of their being kept so long unrecorded.

Very respectfully,
(Signed) R. A. YOUNG.

Sepan quontas esta carta vienen como yo Don Juan Filhiol, Capitan de exto y commandante de milicias de este puerto que otorgo que vendo realment y con efecto a Don Narcisso Bourgeat Mi hierno y vecino de este distrito una tierra de ochenta y quartro arpanes de frente y quaranta y dos de profundidad a cada lado del rio llamado

de la "source dean chande" distante de su entrada en el del Ou-chita como de dos leguas teniendo el manantial de Aquas
39 Calientes par centro corriendo sus limites a la profundidad leste, oeste, paraalelas, limitado por ambos lados con tierras realengas, la misma que me pertenece por averla obtenido de consecion del Sor Don Estevan Miro Gebernado de estas provincias entonces, en fechada doce de Diciembre del Uno de Mil Setecientos Ochenta y siete y vela vendo al ante, dicho con todas sus entrados y validas usos costumbras duenos y servidumbres libre de todo gravamen e hipoteca en el precio de mil y dos cientos prsos fuertes que me ha pagoda de contado de cuya cantidad me day par entregado a mi voluntad y por no ser de presente la entrega renuncio la escepion de la non numerata pecunia y otorga formal recibo, mediante lo qual me aparto y Separo del dueno de propriedad posesion utis Dominio y Seno rio que a dica tierra avia y tenia y todo lo cedo renuncio y traspaso en el comparador y en su que causa y dueno huviere por que como proprio suyo la posea venda cambie o enagene a su voluntad por esta escritura que a su favor otorgo en senas de real entraga conto que ha de ser visto aver adquirido su posesion sin que resesite dedtna prieva de que lo relevo y me obligo a la evicion seguridad y saneamiento de esta venta en toda forma de Dueno con mis bienes avidos y por a ver doy aqui por uncenta la clausa la quarantigia y renuncio los leyes de mi favor con la grat enforma y estando presente al otorgamiento de esta escritura, yo el referido Dn. Narciso Bourgeat la acepto a mi favor recibiendo comprada dica tierra en la cantidad y conformidad que me va vendida de ella me doy—por entregada a mi voluntad, y otorgo formal recibo. En cuyo testimonio es fecha la carta en el Puerto de Ouachita a los veinte y cinco dias del mes de Noviembre del ano Mil Ochocientos y tres yo Dn. Viz Teru Fejerio Teniente del regimento infanteria de la Louisiana y comandante militar y politico de
40 este Puerto y su jurisdicion certifico—conoxco a los otorgantes que firmaron siendo testegos de asistencia el sor Baron de Bastrop y Du Yosef Pomet presencia de Don Alexandro Breard Don Carlos Bettin y Du Francisco Cavet todos de este vecindario entre renglones.

Cavet—vale Bettin—rayado—no vale.

NARCISSO BOURGEAT.

JUAN FILHIOL.

Anto mi comandante,

VIZ. FENR. FEJERIO.

BARON DE BASTROP.
Y. POMET.

[SEAL.]

STATE OF LOUISIANA, }
*Parish of Ouachita.* }

I hereby certify that the above and foregoing is a true and correct copy of the original deed on file and of record in the notarial records of this parish.

Witness my signature and seal of office this 10th day of June, 1889.

R. A. YOUNG,
[SEAL.] *Deputy Clerk Fifth District Court and ex Officio Recorder and Notary Public.*

STATE OF LOUISIANA, }
*Parish of Ouachita.* }

I hereby certify that the above and foregoing is a true and complete copy of the original deed, with endorsements thereon,
41 now on file in my office and of record in Notarial Book Z, page 170, of the records of my office.

Witness my signature and seal of office this 10th day of June, A. D. 1889.

R. A. YOUNG,
*Deputy Clerk Fifth District Court and ex Officio Recorder in and for Ouachita Parish, Louisiana.* [SEAL.]

Endorsed as follows: John Filhiol to Narcisse Bourgeat. Deed.

STATE OF LOUISIANA, }
*Parish of Ouachita.* }

I, Lewis F. Lamy, parish judge in and for said parish and State, do hereby certify the within to be duly recorded in my office, in Record Book "Z," folio 170.

Given under my hand and seal of office on this 24th day of June, A. D. 1833.

LEWIS F. LAMY,
*Parish Judge.* [SEAL.]

Certified copy.

Je soussique Narcisso Bourgeat rotro cede par ce present a Monsieur Jean Filhiol, une terre de trois lienes de face X une de profondeur, situee sue le Bayou Darguelon; eh une idam d'une liene enquarri, situee a la source D'ean Chande au Ouachita les quelles terres il m'a vendu par acte passe pardevant Don Vincent Fernandos Texcico, commandant pour los au dit Ouachita, et que je buiravends pour le meme prij et somme quil me les avait haisse, et qu'et m'a rembouise et pourquvi je li tiens gentle pour quid
42 en joussecomme d'an lien a lai appaitinant, en foi de quoi J ai signe a la Ptr. Coupic le dixsept Juallet mil huit cent siz.

(Signed) NARCISSO BOURGEAT.

Je certifie que la presente retrocession a ete faite et au gendessus.

(Signed) J. POYDRAS,
*Juge du Conte de la Ptr. Coupie.*

STATE OF LOUISIANA, }
*Parish of Pointe Coupee.* }

I, the undersigned, deputy clerk and *ex officio* deputy recorder of mortgages, — that the foregoing and herewith is a true copy of the

original on file and of record in this office; which original has been duly recorded in this office on the 17th July, 1806, under No. 2607.

Witness my official signature and seal of office this 1st day of June, 1889.

A. J. DAYINS, *Recorder*. [SEAL.]

Endorsed as follows: Retrocession de tene N. Bourgeat, a Jean Filhiol. July 17th, 1806.

43 EXHIBITS.

No. 1.

STATE OF LOUISIANA, }
*Parish of Orleans.* }

Mrs. Matilda E. Moore, widow of Joseph H. Moore, of the above parish and State, being duly sworn, deposes and says that she was born at Opelousas, Louisiana, August 15, 1817, and is the daughter of Rezin P. Bowie, deceased, who was a land agent versed in the practice and prosecution of Spanish and French land claims. Deponent further declares that she heard her father and James Fort Muse, husband of Mrs. Margaret A. Muse, one of the heirs of Don Juan Filhiol, speak together about the claim the heirs of said Filhiol have to Hot Springs, in Arkansas; that she knows the said heirs have for many years claimed and attempted to establish their rights to said property. Deponent further declares that her father, said Rezin P. Bowie, died about the year 1841, and that he left a large number of papers relating to land claims; that after his death parties applied to her mother and herself for documents relative to the Hot Springs claim of the Filhiol heirs; that search was made among her father's papers for them, but without success; that the greater part of her father's papers relating to land claims were taken possession of and carried off by one John Wilson, who had been interested with her father in the prosecution of land claims, and she was under the impression the Hot Springs papers were among those carried off by Wilson. Deponent further declares that her mother, widow of said Rezin P. Bowie, died about August 25, 1875; that after her death, while looking over her effects, deponent found in an old trunk containing relics and papers which had belonged to her mother
44 *she found* a package of papers rolled in old an newspaper, marked "Papers belonging to Mrs. Bowie," which, on examining, she exclaimed, "Why, here are Mrs. Muse's Hot Springs papers." Deponent declares said package contained the original grant to Don Juan Filhiol by Estevan Miro, a certificate of survey signed Carlos Trudeau, and a pen-and-ink sketch or plat of survey, and other papers. Deponent further declares that she gave said package of papers to Mrs. Margaret A. Muse, widow of the aforesaid James Fort Muse, some time during the year 1883. Deponent further declares that the pen-and-ink sketch or plat of survey which accompanied the papers delivered by her to Mrs. Muse was similar in ap-

pearance to the plats or plans of surveys of French and Spanish grants and was executed on paper similar in appearance to the paper upon which are written the grant by Miro and the certificate of survey of Trudeau and was signed by Carlos Trudeau.

MATILDA E. MOORE.

Sworn to and subscribed before me this 20th day of September, 1889, A. D.

FRANK HEBERT,
*Notary Public.* [SEAL.]

No. 1½.

STATE OF LOUISIANA, }
*Parish of Orleans.* }

Mrs. Matilda E. Moore, widow, a resident of the above parish and State, being duly sworn, deposes and says she has sufficient knowledge of the Spanish language to know the purport of a grant written in that language, and that she is familiar with the form and
45 appearances of land grants made by the French and Spanish governments, having seen a number of them in the possession of her father while he was engaged in attending to land claims.

MATILDA E. MOORE.

Sworn to and subscribed before me this 5th day of October, 1889.

FRANK HEBERT,
*Notary Public.* [SEAL.]

No. 2.

STATE OF LOUISIANA, }
*Parish of Orleans.* }

Mrs. Ellen M. Coates, widow, a resident of the city of New Orleans, being duly sworn, deposes and says she is a daughter of James Fort Muse and Margaret A. Bourgeat, and a great granddaughter of Don Juan Filhiol, who was commandant of the post of Ouachita from 1783 to 1800, and to whom Don Estevan Miro, governor of the provence of Louisiana, made a grant in 1788 of a league square of land in the district of Arkansas so as to include the Hot Springs. Deponent further declares that Don Juan Filhiol and his heirs, after his death, in 1821, always claimed said land as theirs under the aforesaid grant; that for more than fifty years the heirs have made continual efforts to obtain possession of said property and to establish their rights, employing skilled agents and attorneys for that purpose, among other agents one Rezin P. Bowie, who died about the year 1841. Deponent further declares that the original grant papers for the aforesaid property were mislaid or suppressed until the year 1883, when one Mrs. Matilda E. Moore, widow, a resident of
the city of New Orleans, and a daughter of the aforesaid
46 Rezin P. Bowie, delivered to deponent's mother, Mrs. Margaret A. Muse, the said grant papers, saying she had found them in an old trunk in which her mother, widow of the said Bowie, had kept her private and family relics. Deponent further

declares that the claim of the Filhiol heirs is based on a complete grant; that up to the year 1870 the claimants for land in Arkansas under complete grants had no way of proceeding against the United States, either in court or before the land department, as allowed in other States by divers acts of Congress; that by act of Congress approved June 11, 1870, entitled "An act in relation to the Hot Springs reservation in Arkansas," but ninety days were allowed claimants in which to file suits in the Court of Claims, while in other States years were allowed; that during the time allowed by the aforesaid act one Thomas S. Drew, of Arkansas, was the agent of the heirs of Filhiol; that he obtained many documents and papers relating to their claim from them, but he failed either to file suit in the Court of Claims or to bring their claim to the notice of Congress; that without notice to the heirs he summarily abandoned their case, and they have never been able to recover the papers placed in his hands, he having left Arkansas; that after his defection and after the expiration of the time allowed by the aforesaid act, in October, 1873, the claim was placed in the hands of Judge W. J. Q. Baker, of Monroe, who, after taking a large amount of testimony and attempting to obtain legislative action by Congress, which he asserted was prevented by the opposition of the suitors for the same property, then in the Court of Claims, and the expiration of the session of the Congress, either abandoned the case or died while prosecuting it. Deponent further declares that since the recovery of the original grant papers in 1883, the want of which has always been asserted to be the
47 stumbling block in establishing the claim, she has been acting for her mother, whose great age has prevented her taking any active part in attending to this claim, and has made every effort to procure the necessary legal assistance to prosecute it; that she has submitted the papers to several lawyers for examination, with the view of placing the claim in their hands for prosecution, but, on account of her moderate means, without success until the present year; that the numerous heirs of Don Juan Filhiol are scattered in Louisiana, Mississippi, Texas, and Mexico; that the necessity of unity of action on their part, the great distance separating them, and the difficulty in communicating with them, together with the lack of means to obtain legal assistance, has caused the apparent delay in the application for relief, and it was only in the present year that her present attorney informed her that the Congress of the United States would grant the heirs, upon a proper showing, the same facilities allowed to other claimants to prosecute their rights in the courts of the country.

ELLEN M. COATES.

Sworn to and subscribed before me this nineteenth day of September, 1889, A. D.

FRANK HEBERT,
*Notary Public.* [SEAL.]

No. 3.

STATE OF LOUISIANA, }
*Parish of Orleans.* }

Mrs. Margaret Adelaide Muse, widow, of the above parish and State, being duly sworn, deposes and says she was born December 5, 1803, and is the daughter of Narcisso Bourjeat and Marie
48 Barbe Filhiol, and a granddaughter of Don Juan Filhiol, who was Spanish commandant of the post of Ouachita from 1783 to 1800, and to whom Don Estevan Miro, governor of the provence of Louisiana, on February 22, 1788, made a grant of a league square of land in the district of Arkansas so as to include the Hot Springs; that she married James Fort Muse, a lawyer, February 22, 1821, and that he died January 14, 1843. Deponent further declares that in 1803 her grandfather, Don Juan Filhiol, sold the tract of land granted as above to her father, Narcisso Bourjeat; that in 1806 Narcisso Bourjeat retroceded the same land to Don Juan Filhiol. Deponent further declares the original grant papers to the aforesaid land were lost to the Filhiol heirs until a few years since, when Mrs. Matilda E. Moore, widow, a resident of the city of New Orleans and a daughter of one Rezin P. Bowie, who about the year 1840 had been employed by the Filhiol heirs to prosecute and establish their title to the above land, delivered to deponent the original Spanish grant of Don Estevan Miro and the certificate of survey of Don Carlos Trudeau, royal surveyor of the provence of Louisiana, showing a survey by him of the league square of land granted above so as to include the Hot Springs in Arkansas, saying she had found them in an old trunk which had not been opened for years, among other relics of her mother, deceased wife of the aforesaid Rezin P. Bowie. Deponent further declares that prior to the recovery of the original grant papers aforesaid she and the other heirs had used due diligence in prosecuting their rights under said Spanish grant and had agents and attorneys employed continuously for that purpose for more than fifty years. Deponent declares the documents handed to her by aforesaid widow Moore consisted of the original grant, the certificate of Trudeau, royal surveyor, and a pen-and-ink sketch or plat of survey
49 and other papers. Deponent further declares that owing to her great age she is unable to take any active steps in pushing the claim for the aforesaid lands, and has put the papers in the hands of her daughter, Mrs. Ellen Muse Coates, of New Orleans, for that purpose.

MARGARET A. MUSE.

Sworn to and subscribed before me this 20th day of September, 1889.

FRANK HEBERT,
*Notary Public.* [SEAL.]

No. 4.

STATE OF LOUISIANA, }
*Parish of Ouachita.* }

Hypolite Filhiol, of the above parish and State, being duly sworn, deposes and says he is the son of Edmond Landry Grammont Filhiol, and a grandson of Juan or Jean Filhiol, who was Spanish commandant of the post of Ouachita from 1782 to 1800, and to whom was granted by Don Estevan Miro, governor of the provence of Louisiana in 1788, a tract of land one league square, so as to include the Hot Springs, in the district of Arkansas. Deponent declares that the grant papers to said land were lost or mislaid for many years; that since the death of Don Juan Filhiol, in 1821, his heirs have made repeated and continued efforts to substantiate their claim to said land, having employed numerous lawyers and agents versed in the land laws and practice to prosecute it, but, owing to the loss of the original grant papers, their said agents have never been able to prosecute their claim to a finality; that these agents, after investigating this claim and obtaining all the supporting evidence in the possession of the heirs, have one after the other abandoned
50 its prosecution for the want of the original grant papers from the Spanish government, and that many of the documents placed in the hands of these agents supporting their title the heirs have never been able to recover; that since the expiration of the time allowed by the act of Congress for the institution of proceedings for the Hot Springs, entitled "An act in relation to the Hot Springs reservation in Arkansas," approved June 11, 1870 (U. S. Stats., vol. 16, p. 149), deponent is informed that Mrs. M. A. Muse, one of the heirs of said Don Juan Filhiol, has recovered the said original grant papers to Don Juan Filhiol, which will enable his heirs to substantiate and establish their claim to the said tract of land.

H. FILHIOL.

Sworn to and subscribed before me on this 6th day of September, 1889.

ROB'T RAY,
*U. S. Commissioner.* [SEAL.]

51 Which demurrer is as follows:

Comes said defendant and demurs to the amended complaint herein, because—

1. It does not state facts sufficient to constitute a cause of action.

2. Because if plaintiffs have any remedy it must be pursued in equity and not at law.

ROSE, HEMINGWAY AND ROSE,
*For Defendant.*

Filed April 18, 1895.

RALPH L. GOODRICH, *Clerk.*

On April 19th, 1895, as follows:

Come the plaintiffs, by C. J. Boatner, E. W. Rector, and Dan. W. Jones and McCain, Esqrs., their attorneys, and comes the defend-

ant, by Rose, Hemingway and Rose, Esqrs., and Joseph W. House, Esqr., district attorney, its attorneys; and the argument on the demurrer not being concluded on yesterday, the same is now resumed; and the argument not being concluded, the same is continued until tomorrow morning.

On April 20, 1895, as follows:

Come the plaintiffs, by C. J. Boatner, E. W. Rector, and Dan. W. Jones and McCain, Esqrs., their attorneys, and comes the defendant, by Rose, Hemingway and Rose, Esqrs., and Joseph W.
52 House, Esqr., district attorney, its attorneys; and the argument on the demurrer not beingIconcluded on yesterday, the same is now resumed; and the argument not being concluded, the same is continued until Monday morning at nine o'clock.

On April 22, 1895, as follows:

Comes the defendant, by Rose, Hemingway and Rose, Esqrs., and Joseph W. House, Esqr., district attorney, its attorneys, and by leave of the court files herein its answer, and come the plaintiffs, by J. C. Boatner, E. W. Rector, and Dan. W. Jones and McCain, Esqrs., their attorneys; and the argument on the demurrer not being concluded on Saturday, the same is now resumed; and the argument not being concluded, the same is continued until tomorrow morning.

53 Which answer is as follows:

United States Circuit Court, Eastern District of Arkansas, Western Division.

MARGARET A. MUSE *et al.*
*vs.*
ARLINGTON HOTEL COMPANY.

I.

Comes the said defendant and for answer herein says that as to the citizenship of the several plaintiffs this defendant has not sufficient knowledge or information upon which to found a belief, and therefore requires proof of the same.

II.

That as to the history given by the amended complaint of Don Juan Filhiol defendant says that it has no knowledge or information thereof sufficient to base a belief upon, and therefore requires proof of the same.

III.

Defendant denies that Don Estevan Miro, governor of the provinces of Louisiana, on the 22nd day of February, 1788, granted to the said Filhiol one square league of land, with the hot springs, at the city of Hot Springs, as a center of said league.

IV.

Defendant denies that any grant was made by the said governor to the said Filhiol of any part of the lands mentioned in said amended complaint.

V.

54 Defendant denies that the paper purporting to be from the archives, purporting to be signed by said Miro and dated on the 22nd day of February, 1788, was ever signed or sealed by him.

VI.

It denies that Don Carlos Trudeau, on the 6th day of December, 1788, made any certificate of measurement of said lands for the said Filhiol.

VII.

It denies that said Trudeau at the time held any official position as surveyor which would authorize him to make the said survey an official one.

VIII.

It denies that the said certificate copied in said amended complaint dated the 6th day of the month of December, 1788, was ever signed by the said Carlos Trudeau.

IX.

Defendant says that if said Carlos Trudeau ever signed said certificate it was not signed by him in an official capacity.

X.

It denies that said Filhiol or the plaintiffs, or any one under whom they claim, ever had actual possession of any part of said lands.

XI.

It denies that said Filhiol conveyed said land or any part of it to Narcisso Bourgeat, and denies that said Filhiol ever executed the deed alleged to be inserted in said complaint, and denies that the same was signed by said Filhiol as grantor or by Baron Bastrop and John Pomet or either of them as witnesses thereto.

XII.

It denies that the certificate purporting to be signed by Vinciente Fernandez Techiero was signed, or that he made the certifi-
55 cate purporting to be attached to said deed and to be copied in said amended complaint.

XIII.

Denies that the said Bourgeat retroceded said lands to said Filhiol, as stated in said amended complaint, and denies that the paper

purporting to be a deed from said Bourgeat to Filhiol, copied in said complaint, was ever executed by said Bourgeat, and denies that the same was executed in the presence of J. Poydras, as stated in said amended complaint.

XIV.

As to the allegation made in said amended complaint to the effect that at the time therein mentioned the Spanish colonial law forbade any public officer having authority to receive acknowledgments of deeds for lands, unless they knew that the vendor had the title proposed to be sold, this defendant says that it has no knowledge or information which is sufficient to found a belief upon, and therefore denies the same.

XV.

That as to the allegation in the amended complaint that the said lands were leased by said Filhiol to one Stephen B. Wilson, this defendant says that it has no knowledge or information thereof sufficient to found a belief upon, and therefore it denies the same.

XVI.

As to the allegations made in said amended complaint that said pretended grant from said Miro to said Filhiol was lost at any time, this defendant has no knowledge or information sufficient to found a belief upon, and therefore denies the same.

XVII.

56 That as to whether the plaintiffs are the heirs of the said Filhiol, and as such entitled to bring this suit, this defendant has no knowledge or information sufficient to found a belief upon, and therefore denies the same.

XVIII.

Defendant denies that it has been in the unlawful possession of said property, or any part thereof, or is now in such unlawful possession. On the contrary, said defendant holds the same under a lease granted to it by the authorities of the Government of the United States, the true owner in fee of said land, executed by the Secretary of the Interior to this defendant and dated on the — day of ——, 18—, by which it leased the land in controversy from the United States for a period of five years next ensuing, as will be seen by copy of the lease hereto attached, marked "Exhibit A," and made part hereof.

XIX.

Defendant further says that said pretended grant to said Filhiol, if ever made, was void, because at the time the same was made the land in controversy was in the exclusive possession of the Indians, by whom it had been occupied and owned from time immemorial.

XX.

Also that said survey purporting to have been made by Trudeau, if ever made, was not made, returned, or filed as required by the Spanish laws in force in the province of Louisiana at the time when the same is alleged in the said amended complaint to have been executed.

XXI.

That the lands in suit have been in the actual possession of various persons continuously ever since and before the 1st day of January, 1810, who held the same in subordination to the title of the United States, which was acquired by the cession of the
57 Territory of Louisiana by France to the United States, in 1803, and by a later purchase from the Indians, who had lived on and occupied said lands from time immemorial down to the year 1818, when their title was extinguished by a purchase from them by the United States, and that since the second day of October, 1876, the United States has been in the actual and sole possession of said lands, holding the same in hostility to all the world; that neither the plaintiffs nor their ancestors or those under whom they claim have ever had possession of any part of said lands, and that neither the plaintiffs nor those under whom they claim filed their evidences of title or did other acts prescribed by an act of Congress entitled "An act for ascertaining and adjusting titles and claims to land within the territory of Orleans and the district of Louisiana," which was approved March 2, 1805; that therefore their claim to the lands in dispute herein is forever barred.

XXII.

Defendant says that the Congress of the United States passed an act entitled "An act enabling the claimants of lands within the limits of the State of Missouri and Territory of Arkansas to execute proceedings to try the validity of their claims," which was approved on the 26th day of May, 1824; that neither the plaintiffs nor those under whom they claim title did, within three years after the passage of said act, prosecute to a final decision their claim to said supposed grant. Wherefore the defendant says that the said claim is barred by the act aforesaid.

XXIII.

That the Congress of the United States passed an act entitled "An act in relation to the Hot Springs reservation in Arkansas," approved May 27, 1870, by which it was required that all persons having any claims to the lands in controversy and other
58 lands known as the Hot Springs reservation should institute against the United States, in the Court of Claims, and prosecute to final decision any suit that might be necessary to settle the same, provided that no such suits should be brought at any time after the expiration of ninety days from the passage of said act, and that all claims to any part of said reservation upon which suit

should not be brought under the provisions of this act within the time should be forever barred. Defendant says that neither the plaintiffs nor those under whom they claim title did at any time within said period of ninety days institute any suits in said Court of Claims for the purpose of settling their claim or title to said land. Wherefore defendant says that the said claim is barred by the provisions of said act.

XXIV.

Said defendant says that the plaintiffs' cause of action, if any they had, did not accrue at any time within seven years next before the commencement of this suit.

XXV.

And said defendant for further defense says that the said claim, if any such ever existed, has long ago been abandoned by the said plaintiffs and those under whom they claim title and so has ceased long ago to have any validity whatever and is barred by various statutes of limitation.

XXVI.

Defendant denies that Carlos Trudeau, surveyor general of Louisiana, made any survey and report thereof, as set forth in said complaint.

(Signed) ROSE, HEMINGWAY & ROSE.
J. W. HOUSE.

Endorsed: Filed April 22, 1895. Ralph L. Goodrich, clerk.

59 On April 23, 1895, as follows:

Comes the defendant, by Rose, Hemingway and Rose, Esqrs., and Joseph W. House, Esqr., district attorney, its attorneys, and by leave of the court files herein its additional exceptions to grant from Miro to Filhiol, and come the plaintiffs, by C. J. Boatner, E. W. Rector, and Dan. W. Jones and McCain, Esqrs., their attorneys; and the argument on the demurrer not being concluded on yesterday, the same is now resumed; and the argument not being concluded, the same is continued until tomorrow morning.

Which additional exception is as follows:

Comes said defendant, and, for further exception to said pretended grant from Miro to Filhiol, defendant says:

2. That it is not sealed with any official seal.

ROSE, HEMINGWAY AND ROSE,
J. W. HOUSE, *For Defendant.*

Filed April 23, 1895.

RALPH L. GOODRICH, *Clerk.*

On April 24, 1895, as follows:

Come the plaintiffs, by C. J. Boatner, E. W. Rector, and Dan. W. Jones and McCain, Esqrs., their attorneys, and comes the
60 defendant, by Rose, Hemingway and Rose, Esqrs., and Joseph W. House, Esqr., district attorney, its attorneys; and

the argument on the demurrer not being concluded on yesterday, the same is now resumed, and the court, having heard all the argument of counsel and not being well advised in the premises, takes time to consider of its judgment herein.

On June [illegible]1895, as follows:

Come the plaintiffs, by E. W. Rector, C. J. Boatner, and Dan. W. Jones and McCain, Esqrs., their attorneys, and comes the defendant, by Rose, Hemingway and Rose, Esqrs., its attorneys, and the court having considered the exceptions to the Exhibits A and B to the complaint herein, being the alleged grant of land by Estevan Miro to Jean Filhiol and the alleged survey of Carlos Trudeau, and the demurrer of the defendant to the complaint herein, it is now ordered and considered that the said exceptions and said demurrer both be sustained; to this ruling the plaintiffs excepted at the time and asked that their exceptions be noted of record, which is done, and, plaintiffs declining in open court to amend the said complaint, it is now ordered and considered that this suit be, and the same is, dismissed, and that defendant do have and recover of and from said plaintiffs all its costs in and about this suit expended, and the said plaintiffs file herein their writ of error and citation, which are allowed, sealed, and signed by the court, and also assignment of errors.

Which citation is as follows:

61 The United States of America to the Arlington Hotel Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division, eastern district of Arkansas, wherein Margaret A. Muse, Hippolite Filhiol, Francis J. Watts, Harriet L. Watkins, Hattie S. Burch, Rowland M. Filhiol, Jerome Bres, Benedette H. Bress, James L. Sanford, Julia M. Watts, Mary A. Watts, Hardy H. Filhiol, Hiplite Bres, Alberta D. Sanford, by her mother and next friend, Mary A. Dempsey; Frank C. Bres, Ferdinan A. Fenner, Blanche F. Power, Robert W. Fenner, Lizzie S. Cochran, Robert R. Sanford, Mary A. Bres, Charles C. Sanford, and Alice F. South, heirs-at-law of Don Juan Filhiol, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

The Seal of the Circuit Court. U. S. A., Western Division of East. Dist. Ark.

Witness the Honorable John A. Williams, judge of the district court, this 1st day of June, A. D. 1895.

JNO. A. WILLIAMS,
*U. S. Dist. Judge.*

Service acknowledged this June 1st, 1895.

ROSE, HEMINGWAY & ROSE,
J. W. HOUSE, *For Defendant.*

62 The following map was used as an exhibit on the hearing of this case:

(Here follows map marked p. 63.)

64 Which assignment of errors is in words and figures following, to wit:

Circuit Court of the United States for the Eastern District of Arkansas, Western Division.

MARGARET A. MUSE, HYPOLITE FILHIOL, FRANCIS T. WATTS, Harriet L. Watkins, Hattie S. Burch, Roland M. Fi-hiol, Jerome Bres, Bermicide Bres, James L. Sanford, Julia M. Watts, Mary M. Watts, Hardy H. Filhiol, Hypolite Bres, Alberta D. Sandford, by Her Mother and Next Friend, Mary A. Dempsey; Frank C. Bres, Ferdinand H. Filhiol, Blanche F. Power, Robert W. Fenner, Lizzie S. Cochran, Robert R. Sandford, Alice F. South
*against*
ARLINGTON HOTEL COMPANY.

*Assignment of Errors.*

Come the said plaintiffs in error, by C. J. Boatner, E. W. Rector, Dan. W. Jones, and W. S. McCain, their attorneys, and say that in the record and proceedings in the above-entitled matter there is manifest error, in this, to wit:

1. That the court erred in sustaining the defendant's demurrer to the plaintiffs' complaint.

2. That the court erred in overruling the plaintiffs' motion to strike from the files the defendant's exceptions to the plaintiffs' documentary evidence of title.

3. That the court erred in sustaining the defendant's exceptions to the plaintiffs' documentary evidence of title marked Exhibit "A" to their complaint, the same being the grant of the one square league of land therein mentioned, of which the land in controversy in this action is a part, made by Estevan Miro, the governor
65 intendant of the province- of Louisiana and Florida West, inspector of troops, etc., to Don Juan Filhiol.

4. That the court erred in holding that said grant was not a perfect grant, but only an incomplete grant.

5. That the court erred in holding that said grant did not convey the title to one square league of land therein mentioned to the said Don Juan Filhiol.

6. That the court erred in holding that there was no seal to said grant.

7. That the court erred in holding that a seal was necessary to the validity of said grant.

8. That the court erred in holding that said grant should have been registered.

9. That the court erred in holding that said grant was not registered.

10. That the court erred in holding that said grant should have been recorded.

11. That the court erred in holding that said grant was not recorded.

12. That the court erred in holding that said grant was not made in accordance with the Spanish laws then in force in the province of Louisiana.

13. That the court erred in holding that the Spanish governor of the province of Louisiana could not grant said land in the manner mentioned to said documentary evidence of title.

14. That the court erred in holding that there was no survey of said square league of land made by Don Carlos Trudeau, surveyor general of the province of Louisiana.

15. That the court erred in holding that there was no procès verbal attached to a survey of said land made by Don Carlos
66 Trudeau as such surveyor general, describing it in such manner as to segregate it from the public domain.

16. That the court erred in holding that there was no figurative plan of said land made by said Don Carlos Trudeau as such surveyor general.

17. That the court erred in holding that plaintiffs in their complaint do not allege the loss of said survey, figurative plan, and procès verral.

18. That the court erred in holding that plaintiffs should have allowed the contents of the petition or memorial upon which Filhiol's grant was based.

19. That the court erred in sustaining defendant's exceptions to plaintiffs' documentary evidence of title marked Exhibit B to their complaint, the same being the certificate made by said Don Carlos Trudeau, as such surveyor general, that he had surveyed the league of land granted to Don Juan Filhiol as aforesaid, etc.

20. That the court erred in holding that Don Juan Filhiol was not put into possession of said land under said grant.

21. That the court erred in holding that Don Juan Filhiol was never in possession of said land under said grant.

22. That the court erred in holding that Don Juan Filhiol's title to the said land under said grant was not good unless he was put into actual pedal possession of it by livery of se-zin or by going upon it with an official of the Spanish government in the presence of witnesses, and going through such a ceremony as is described in the case of United States *vs.* Davenport, 15 Howard, 5.

23. That the court erred in holding that Don Juan Filhiol abandoned his title to said land.

67 24. That the court erred in sustaining defendant's exceptions to the plaintiffs' documentary evidence of title marked Exhibit C of the complaint, the same being the conveyance from said Don Juan Filhiol to Narcisso Bourgeat of the said square league of land.

25. That the court erred in sustain-ng defendant's exceptions to

plaintiffs' documentary evidence of title marked Exhibit D of their complaint, the same being the retrocession of said league of land by said Bourgeat to said Filhiol.

26. That the court erred in holding that it is of no importance to consider whether the deed from Filhiol to Bourgeat or the deed from Bourgeat to Filhiol describes the same land referred to in the said grant, and in holding that the title of the plaintiffs is not affected by those conveyances.

27. That the court erred in holding that the said grant to said Filhiol is not protected by the treaty between the United States and France of April 30, 1803.

28. That the court erred in assuming to find facts prejudicial to the plaintiffs, when only questions of law were involved.

29. That the court erred in holding that the plaintiffs' claim is barred under the act of Congress of May 28th, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims."

30. That the court erred in holding that the plaintiffs' claim is barred by the act of Congress of June 11, 1870, known as the Hot Springs act.

31. That the court erred in holding that the defense of the statute of limitations can be raised by demurrer in the State of Arkansas.

32. That the court erred in holding that the Indians occupied the land in controversy at the time of said grant to Filhiol,
68 and that said grant did not take effect until that occupancy had ceased.

33. That the court erred in rendering judgment for the defendant.

Whereupon the said plaintiffs in error pray that the judgment of the circuit court of the United States for the eastern district of Arkansas, western division, be reversed, and that the cause be remanded to said circuit court, with instructions to overrule the demurrer and the exceptions to the plaintiffs' documentary evidence of title filed by the defendant, and to proceed to the trial of the case upon its merits.

C. J. BOATNER,
*Of Monroe, La.*,
E. W. RECTOR,
*Of Hot Springs, Ark.*,
DAN. W. JONES,
*Of Little Rock, Ark.*,
*Attorneys for Plaintiff in Error.*

Endorsed: Filed June 1st, 1895. Ralph L. Goodrich, clerk.

69 The following opinion was delivered by the court:

70 MARGARET A. MUSE *et al.*, Plaintiffs,
*vs*
THE ARLINGTON HOTEL COMPANY, Defendants.

This is an action of ejectment brought on the 25th day of July, 1894, by the plaintiffs, as heirs of Juan Filhiol, against the defendant, for a tract of land, including the hot springs, in the city of Hot Springs, in this State. The plaintiffs rely for title on certain documents, copies of which are filed with the complaint and are made exhibits hereto and which are as follows:

1. A paper, made Exhibit A, purporting to be a Spanish grant, translated from the Spanish language to the English in the following words:

"(From the land archives.)

The governor intendent of the provinces of Louisiana and Florida West, inspector of troops, etc.:

Considering the anterior surveys made by the surveyor of this province, Don Carlos Trudeau, concerning the possession given to Don Juan Filhiol, commandant of this post of the Ouachita, of a tract of land of one square league, situated in the district of Arcansas, on the north side of the River Ouachita, at about two leagues and one-half distant from said River Ouachita, and understanding that this land is to be measured so as to include the site or locality known by the name of Hot Waters, as is besides expressed by the figurative plan and certificate of said surveyor, Trudeau, above named, and recognizing this mode of measurement, we approve of this survey, using the faculty which the King has placed in
71 us, and assign in his royal name unto the said Juan Filhiol the said league of land in order that he may dispose of the same and the usufruct thereof as his own.

We give these presents under our own hand. Sealed with the seal of our arms and attested by the undersigned, secretary of His Majesty in this government, and intendents.

In New Orleans, on the 22nd of February, 1788.

ESTEVAN MIRO.

By mandate of His Excellence:

ANDRES LOPEZ ARMESTO."

"Registered."

2. A paper, purporting to be a survey, also translated from the Spanish language, marked Exhibit B, in the following words:

"Don Carlos Trudeau, land and particular surveyor of the province of Louisiana, in consequence of a memorial signed on the 12th of December, of the year 1787, by Don Juan Filhiol, commandant of the post of Ouachita, and by order of His Excellency, Don Estevan Miro, brigadier of the R. ex. gob., intendent of the province of Louisiana, West Florida, etc., dated the 22nd of February, 1788, directing me to give possession to the aforesaid commandant of a tract of land

of one league square, situated in the district of Arkansas, to include that spot known by the name of the Warm Waters; and in conformity with the aforesaid order I certify having measured in favor of the aforesaid commandant, Don Juan Filhiol, the league of land indicated in the memorial, situated on the north side of Ouachita river, in the district of Arkansas, at about two leagues and a half distance from said river, to be verified by the figurative plan which accompanies, in conformity with — of the 6th of the present month of December, and of the current year 1788.

(Signed) CARLOS TRUDEAU."

72 Exhibit C to the complaint appears to be a deed from John Filhiol to Narcisso Bourgeat, conveying "a tract of land 84 arpents front and 42 in depth on each side of the stream called the Source of the Hot Springs, about two leagues from where it flows into the Ouachita river, having the Source of the Hot Springs as a center, the boundary lines on the east and west running parallel to their full depth, bounded on both sides by public lands, being the same property acquired by me from Stephan Miro, then governor of these provinces, under date of December 12th, 1787." This deed is not dated, but on it there is endorsed an acceptance of it, dated November 25th, 1803.

Then follows Exhibit D, which purports to be a retrocession by Narcisso Bourgeat to John Filhiol of "one league square, situated at the mouth of the Hot Springs creek, where it flows into the Ouachita, being the same property which he sold to me by act passed before Vincent Fernandez Texiero, then commandant of Ouachita post," dated July 17th, 1806, signed by Narcisso Bourgeat.

The defendant demurred to the complaint because:

1. It states no cause of action.

2. Because if plaintiffs have any remedy it must be pursued in equity and not at law.

The defendant also filed exceptions to the documentary evidence as follows:

"Comes said defendant and excepts to the so-called land grant, made an exhibit of evidence, marked Exhibit A to complaint, because:

1. The said instrument does not purport to be official or to come from any official depository.

73 And said defendant excepts also to the paper purporting to be a survey made by Don Carlos Trudeau, marked Exhibit B to the complaint, because:

1. It does not purport to be official.

2. It does not purport to come from any official depository.

3. Because it shows no such survey as is required by law to sustain the pretended Spanish grant set up in said complaint.

And the said defendant excepts to the instrument purporting to be a conveyance by John Filhiol, marked Exhibit C to said complaint, because:

1. The said deed does not purport to have been signed by the grantor therein.

2. Because the same does not describe the land set forth in the complaint herein.

3. The said deed does not purport to come from any official source or ever to have been filed in any office.

4. It is not authenticated as required by law.

The defendant also excepts to the instrument purporting to be a retrocession by Narcisso Bourgeat, a copy of which is marked Exhibit D to the complaint herein, because:

1. It is not authenticated in a manner required by law.

2. It does not purport to come from any official source.

3. It does not purport to come from any official depository of conveyances of lands.

4. It does not describe the lands mentioned in the complaint."

For plaintiffs, C. J. Boatner, E. W. Rector, Dan. W. Jones, & McCain.

For defendant, Rose, Hemmingway & Rose.

74 *Opinion of the Court by Hon. John A. Williams, District Judge.*

By the statute of Arkansas, the pleadings in the action of ejectment are very nearly assimilated to those of a suit in equity to quiet title. The pleading is special and not general. In his complaint the plaintiff must set forth "all deeds and other written evidences of title on which he relies for the maintenance of his suit, and shall file copies of the same, as far as the same can be obtained, as exhibits therewith, and shall state such facts as shall show a *prima facie* title in himself to the land in controversy." H. & S. Dig., 2578.

All objections to exhibits must be made by exceptions to their admissability before the trial. *Id.*, 2572. The object of this statute is to prevent surprise to either party; also to prevent, as far as may be, the discussion of questions of evidence during the trial, so that trials may be rendered more expeditious and that the attention of juries may not be diverted from their exclusive province.

I do not find it necessary to notice the exceptions to the deed from Filhiol to Bourgeat or the subsequent deed from the latter to the former. In the view of the case that I have taken, it is of no importance to consider whether the deed from Filhiol to Bourgeat or the deed from Bourgeat to Filhiol describes the same land referred to in the alleged grant, as contended for by the plaintiffs; for if so, it is evident that the title of the plaintiffs is not affected by these conveyances, and that by the reconveyance Filhiol
75 could only have acquired the same title that he held in the first instance. As the stream cannot rise higher than its source and Filhiol could not grant any greater estate than he possessed, his title could not be improved by a conveyance to another and a reconveyance to himself.

It is, however, necessary to consider the exceptions to the alleged grant by Governor Miro and the alleged survey of Trudeau.

At the time that the alleged grant in this case was made the regula-

tions of Governor O'Reilly of February 18th, 1770, were in force in the province of Louisiana; the 12th section of which reads as follows:

"All grants shall be made in the name of the King by the governor general of the province, who will at the same time appoint a surveyor to fix the bounds thereof, both in front and depth, in the presence of the judge ordinary of the district and of two adjoining settlers, who shall be present at the survey. The above-mentioned four persons shall sign the process verbal, which shall be made thereof. The surveyor shall make three copies of the same, one of which shall be deposited in the office of the scrivener of the government, another shall be directed to the governor general, and a third to the proprietor, to be annexed to the title of his grant." Copied also in United States *vs.* Boisdore, 11 Howard, 76; also in vol. V, American State Papers, pp. 289–'90.

These regulations were approved by the royal order of the King of Spain of August 24th, 1770, after which they had the force of statutes, which no official had the right to disregard. U. S. *vs.* Moore, 12 How., 217. The Spaniards "were a formal people, and their officials were usually careful in the administration of their
76 public affairs." White *vs.* U. S., 1 Wall., 680. Some degree of conformity with laws thus actually in force must be shown by the plaintiff: "Otherwise there can be no protection against imposition and fraud in these cases." U. S. *vs.* Teschmaker, 22 How., 405.

The applicant for a Spanish grant presented to the governor a petition or *requete*, as it was called, accompanied by what was called a "figurative" or "conjectural" map or plan of the land desired. This map was not made from an actual survey, but served to indicate in a general way the location of the land sought to be acquired, so that the officials might know whether it was vacant or not, and something of its real or prospective value. Without some such information the governor could not act advisedly in making or in refusing the grant. In all cases there was an actual survey on the ground before the title of the Crown was divested, followed by an actual putting the grantee in pedal possession, a proceeding which was the equivalent of delivery of seisin at common law, both ceremonies being derived from the feudal law. The figurative plan has sometimes been called a "chamber survey" (Hunnicutt *vs.* Peyton, 102 U. S., 361), because it was made in an office or other place remote from the land indicated. Scull *vs.* U. S., 98 U. S., 420. The grant upon this chamber survey delivered out for actual survey "meant not, as with us, a perfect title, but an incipient right, which, when surveyed, required confirmation by the governor." U. S. *vs.* Boisdore, 11 How., 99. Until an actual survey was made on the ground, the grant or concession was only a floating and unlocated claim. U. S. *vs.* Hanson, 16 Pet., 200. The actual survey consisted of "running lines with compass and chain, establishing
77 corners, marking trees and other objects on the ground, giving bearings and distances, and making field-notes and plats of the works. These are the ingredients of an actual survey."

Winter *vs.* U. S., Hempst., 362. Until actual survey made, no specific parcel of land was segregated from the public domain, and unless such a survey was made before the cession of Louisiana to the United States no title passed to Filhiol, his heirs or grantees. In U. S. *vs.* Lawton, 5 How., 26, the court, speaking on this subject, expressed the law as follows:

"It follows that the description when applied to the facts is too vague and indefinite for any survey to be made, and that therefore the claimants can take nothing under the concession, and that it is our duty to order the decree of the superior court of East Florida to be reversed and the petition to be dismissed.

We would remark, in addition, that this concession in its leading features cannot be distinguished from various others that have heretofore been brought before this court for adjudication, where no specific land was granted or intended to be granted, but it was left to the petitioner to have a survey made of the land in the district referred to by the concession by the surveyor general of the province, in due form, on the ground, and to cause the plat and certificate of such survey to be recorded by the surveyor general, by which additional public act the land granted was severed from the King's domain, but remained part of it until the survey was made and recorded. Until this was done, the warrant was a floating warrant of survey, not recognized by the government of Spain before the cession nor by this Government since, as conferring
78 an individual title to any specific parcel of land on the petitioner."

Such an inchoate claim as Filhiol possessed at the time of the cession was of no kind of validity as against the United States, and even if it had been expressly confirmed by act of Congress it would have derived its validity alone from that act "and not from any French or Spanish element which entered into its previous existence." Dent *vs.* Emmeger, 14 Wall., 312.

Though the land had been actually surveyed as required by the regulations of Governor O'Reilly, still the claim would have had no validity unless a copy of the survey had been filed in the office of the scrivener of the Government, as therein provided; "but the examination of the surveyor, the actual survey, and the return of the plat were conditions precedent, and he had no equity against the Government and no just claim to a grant until they were performed." Fremont *vs.* U. S., 17 How., 554. On this subject the Supreme Court say:

"This concession was an incomplete grant, and did not vest a perfect title to the property in the grantee, according to the Spanish usages and regulations, until a survey was made by the proper official authority and the party thus put in possession, together also with a compliance with other conditions, if contained in the grant or in any general regulations respecting the disposition of the public domain. Possession with definate and fixed boundaries was essential to enable him to procure from the proper Spanish authority a complete title." U. S. *vs.* Hughes, 13 How., 2; United States *vs.* Hansen, 16 Pet., 199.

If these are the rules to be applied where the grant in itself says nothing about a survey, they must have a more obvious application where the concession itself specifically requires such an actual
79 survey to be made and returned. The grant in this case expressly provides "that this land is to be measured so as to include the site or locality known by the name of Hot Waters." Not only was an actual survey on the ground required by the law, but the grant itself made such an actual survey a condition precedent to any investiture of title. The governor approved the "figurative" survey of Trudeau, but he, as was certainly meet and proper, required that the land referred to should be measured and identified by an actual survey which should leave nothing to conjecture.

No right, legal or equitable, vested in the petitioner until survey was made and returned according to law. "The original concession granted on his petition was a naked authority or permis ion and nothing more." Fremont *vs.* U. S., 17 How., 554; Peralta *vs.* U. S., 3 Wall., 440.

Not only was it necessary that the actual survey should be made, but it and the survey must have been returned and filed as provided in the regulations of O'Reilly; otherwise there was no valid grant. In the Peralta case, *supra*, the court said:

"Written documentary evidence, no matter how formal and complete or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed; but it may be said that the archives of the country may be lost or destroyed; and, if so, that the party in interest should not suffer. This is true, and if the claimant can show, to the satisfaction of the court, that the grant was made in conformity to law and recorded, and that the record of it has been lost or
80 destroyed, he will then be permitted to introduce secondary evidence of it; but the absence of record evidence is necessarily fatal unless that absence can be accounted for."

See also U. S. *vs.* Wiggins, 14 Pet., 350; U. S. *vs.* Kingsley, 12 Pet., 476; Chouteau *vs.* Moloney, 16 How., 234; U. S. *vs.* Cambuston, 20 How., 59; U. S. *vs.* Castro, 24 *id.*, 346; U. S. *vs.* Knight, 1 Black, 227; U. S. *vs.* Castillero, 2 Black, 163; Hornsby *vs.* U. S., 10 Wall., 224; U. S. *vs.* Power, 11 How., 577; U. S. *vs.* Pico, 22 How., 406; U. S. *vs.* Vallejo, *id.*, 416; U. S. *vs.* Bolton, 23 How., 341; U. S. *vs.* Vallejo, 1 Black, 541; U. S. *vs.* Sutter, 21 How., 175; U. S. *vs.* Hansen, 16 Pet., 199; Glenn *vs.* U. S., 13 How., 250.

In this case, as in De la Croix *vs.* Chamberlain, 12 Wheat., 601, the requirement mentioned in the grant being that there should be an actual survey, the title could in no event be perfected or completed until such survey was made and returned according to the provisions of the Spanish laws. See also Purvis *vs.* Harmonson, 4 La. Ann., 421. This survey could not "be done by conjecture; lines and corners must be established by the finding so as to close the survey." Denise *vs.* Ruggles, 16 How., 243; Hunnicutt *vs.* Peyton, 102 U. S., 359.

From a careful review of the authorities, which are numerous

and in perfect harmony, it is clear that the grant in this case "was not so separated by survey or by any such distinctive calls as will admit of a survey." U. S. *vs.* Miranda, 16 Pet., 153; U. S. *vs.* Boisdore, 11 How., 99.

The treaty between the United States and France concerning the cession of Louisiana to the United States, adopted April 30th, 1803, whereby the United States bound itself to protect the rights of the inhabitants of the province, has no application to merely
81 inchoate claims which were not binding on the governments of either Spain or France, but which existed only in entreaty. The treaty added nothing to the law of nations on the subject, and precisely the same rule has always been applied to inchoate entries made under the laws of the United States. Whitney *vs.* Frisbie, 9 Wall., 192; Yosemite Valley cases, 15 *id.*, 87; Shepley *vs.* Cowan, 91 U. S., 330; Hot Springs cases, 92 U. S., 713. So, the title of Filhiol being incomplete at the time of the cession, the treaty "imposes upon the United States no obligation to make a title to lands of which the grantee had neither an actual seisin nor a seisin in law." U. S. *vs.* Miranda, 16 Pet., 153; U. S. *vs.* Hughes, 13 How., 2.

In this case there is no pretense that there was ever anything in any Spanish record that could show any compliance with the Spanish laws in respect of the grant in question. Therefore the grant must be held to be ineffectual to convey any title, legal or equitable. White *vs.* U. S., 1 Wall., 680.

The necessity of an inquiry as to whether the contemporary Spanish law has been conformed to is emphasized by consideration of the case of U. S. *vs.* King, 3 How., 773, where a suit was brought on a Spanish grant that had been forged, to the case of Sempeyrac *vs.* U. S., Hempst., 118, 7 Pet., 222, in which it was shown that one hundred and seventeen decrees rendered in the superior court of the Territory of Arkansas were set aside on bills of review because such decrees had all been based on forged grants and other cases growing out of similar frauds. At any rate, the questions now under consideration are all settled by decisions of the Supreme Court of the United States.

The grant under examination, without a subsequent actual survey on the ground, describes no land whatever that can be identified. "A tract of land of one square league" does not,
82 as a term of description, suggest any boundary whatever. The fact that the tract is described as "one league square" refers only to contents and not to shape. No one familiar with Spanish grants would infer that the tract was to be square. The map of the United States published under the direction of the Commissioner of the General Land Office purports to show in red colors all the Spanish and Mexican grants in our country. A glance at this map will disclose that such grants have been in all sorts of shapes, apparently at the will of the grantee; that only a few are *are* square or in the form of a parallelogram, and that hardly any of them are laid off with any special reference to the cardinal points of the compass.

A tract of land "about two leagues and one-half distant from said river Ouachita" is in the highest degree indefinite. The exact distance from the river is not mentioned, nor is there anything to indicate any point on the river to serve as a place of beginning. It seems to have been suggested that the hot springs should be regarded as the center of the tract, but no such inference can be drawn. Lecompte *vs.* U. S., 11 How., 125. It is a rule of "universal application in the construction of grants, which is essential to their validity, that the thing so granted should be so described as to be capable of being distinguished from other things of the same kind or be capable of being ascertained by extraneous testimony." Buyck *vs.* U. S., 15 Pet., 225. In that case it was said by the court that "it was not possible to locate any land, as no part was granted."

The court added that "the public domain cannot be granted by the courts." This rule has been frequently applied in other cases based on Spanish grants. Hunnicutt *vs.* Peyton, 102 U. S., 359; U. S. *vs.* Castillero, 2 Black, 20. In Villemont *vs.* U. S., 13
83 How., 267, the court said: "Nor is it possible to make a decree fixing any one side line or any one place of beginning for a specified tract of land." In Villalobos *vs.* U. S., 10 How., 556, the court said: "In cases of a vague description this court has uniformly held that no particular land was severed from the public domain by the grant, and that no survey could be ordered by the courts of justice."

In Scull *vs.* U. S., 98 U. S., 413, a map was attached to the figurative survey. A surveyor testified that from that map he could survey the land and mark out its metes and bounds, and claimed that he had made an accurate survey of the land claimed, but the court held that there was no valid grant. In U. S. *vs.* Boisdore, 11 How., 93, the claim was held to be void for the want of an actual survey. The court said that if the identity of the land could not be fixed, and it could not be ascertained that any specific tract was severed from the public domain by the grant at the time that Spain ceded Louisiana, "then the claim cannot be ripened into a complete title by our decree, as we only have power to adjudge what particular tract of land was granted. Our action is judicial. We have no authority to exercise political jurisdiction and to grant, as the governors of Spain had and as Congress has."

See also U. S. *vs.* Delespine, 15 Pet., 319. In Buyck *vs.* U. S., 15 Pet., 225, the court said: "We apply to the case the laws and ordinances of the government under which the claims originated, and that rule, which must be of universal application in the construction of grants, which is essential to their validity, that the thing
84 granted should be so described as to be capable of being distinguished from other things of the same kind, or be capable of being ascertained by extraneous testimony."

Only perfect titles were protected by the law of nations and by the treaty between France and the United States, and there could be no perfect title without an actual survey made previous to the cession of Louisiana. Dent *vs.* Emmeger, 14 Wall., 312. So indispensable was an accurate survey that it has often been held that decrees

confirming Spanish or Mexican grants under the various acts of Congress allowing confirmations were void is the grants and surveys would not enable the courts to ascertain the specific boundaries of the tracts referred to. Leboux *vs.* Black, 18 How., 473; Menard *vs.* Massey, 8 *id.*, 293; Snyder *vs.* Sickles, 98 U. S., 203; West *vs.* Cochran, 17 How., 403; Landes *vs.* Brent, 10 *id.*, 348; U. S. *vs.* Halleck, 1 Wall., 439. In Stanford *vs.* Taylor, 18 How., 412, the court said:

"The law is settled that where there is a specific tract of land confirmed according to ascertained boundaries the confirmee takes a title on which he may sue in ejectment. The case of Bissell *vs.* Penrose, 8 How., 317, lays down the true rule.

But where the claim has no certain limits and the judgment of confirmation carries along with it the condition that the land shall be surveyed and severed from the public domain and the lands of others, then it is not open to controversy that the title attaches to no land, nor has a court of justice any authority in law to ascertain and establish its boundaries, this being reserved to the executive department. The case of West *vs.* Cochran, 17 How., 403, need only be referred to as settling this point. And the question here is whether the concession to Perry is indefinite and vague and
85 subject to be located at different places.

It is to be forty by forty arpens in extent; it is to lie along the River Des Peres, from the north to the south, and to be bounded on the one side by the lands of Louis Robert and on the other by the domain of the King. On which side of Robert's land it is to lie we are not informed, further than that it is to lie along the river from north to south. The record shows that if surveyed west of Robert's tract the forty by forty arpens includes the River Des Peres, but if surveyed east of Robert's land it will not include the river. The uncertainty of outboundary in this instance is too manifies, in our opinion, to require discussion to show that a public survey is required to attach the concession to any land."

86 To the same effect see Lafayette *vs.* Blanc, 13 La. Ann., 59.

In Arcenaux *vs.* Benoit, 21 *id.*, 673, the court said: "But where the claim has no certain limits and the judgment of confirmation carries along with it the condition that the land shall be surveyed and severed from the public domain and the lands of others, then it is not open to controversy that the title attaches to no land, nor has a court of justice any authority in law to ascertain and establish its boundaries, this being reserved to the executive department. The case of West *vs.* Cochran, 17 How., 403, need only be referred to as settling this point."

The whole doctrine is summed up in what was said by Miller, J., in the Scull case, *supra:* "The title must be complete under the foreign government. The land must have been identified by an actual survey with metes and bounds, or the description in the grant must be such that judgment can be rendered with precision by such metes and bounds, natural or otherwise. There must be nothing left to doubt or discretion in its location. If there is no previous actual survey which a surveyor can follow and find each line and its length, there must be such a description of natural objects for

boundaries that he can do the same thing *de novo*. The separation from the public domain must not be a new or conjectural separation with any element of discretion or uncertainty."

Nor does the certificate of the surveyor, Trudeau, help the matter. This merely recites a survey "to be verified by the accompanying figurative plan;" but a recital in a grant that prerequisites had been complied with is not sufficient ground for a presump-
87 tion that they have been observed. Fuentes *vs.* U. S., 22 How, 443. The certificate of survey in this case is of no probative value whatever. It refers to no landmarks, natural or artificial; gives no lines of boundary, no metes; identifies nothing. It adds not a ray of light to the grant itself. In U. S. *vs.* Castant, 12 How., 439, the boundaries were described by Trudeau "with great precision," and possession had been delivered by him to the grantee. Though the certificate of Trudeau in this case shows that he was directed by the governor in his grant to put Filhiol in possession of the land (which, however, is not true), it does not show that he had done so. The delivery of possession under the Spanish law was a formal and indispensable requisite. In U. S. *vs.* Davenport, 15 How., 5, it is shown how the ceremony was performed. The official went on the land in the presence of the grantee and of witnesses and took the grantee "by the right hand, walked with him a number of paces from north to south and the same from east to west, and he letting go his hand, the grantee walked about at pleasure on the said territory of La Nana, pulling up weeds, and made holes in the ground, planted posts, cut down bushes, took up clods of earth and threw them on the ground, and did many other things in token of the possession in which he had been placed, in the name of His Majesty, of said lands with the boundaries and extension as prayed for." Nothing of the sort seems to have been done in this case.

The certificate of Trudeau refers to the petition or memorial upon which Filhiol's grant was based and to an accompanying figurative plan. Neither of these is produced, nor is the loss of either shown, nor are the contents of either alleged. It is easy to account for the fact that Trudeau does not certify any
88 actual survey or any delivery of possession. In 1788 the nearest white settlements to the hot springs were insignificant and remote. The lands were occupied by the Indians. To reach them would require a journey of many days, involving privation and terror. The lands had then no commercial value, hence there was a total non-compliance with the regulations of O'Reilly. The Spanish laws prevailing at that time in the Territory of Louisiana in regard to the Indian tribes were far more humane than any laws that have ever existed in this country. 5 Am. St. Papers, 226, 232, 234. Yet it has always been held that the Indian right of occupancy in the United States was sacred until extinguished by cession to the Federal Government. U. S. *vs.* Cook, 19 Wall., 591; Leavenworth R. Co. *vs.* U. S., 92 U. S., 742; Cherokee Nation *vs.* Georgia, 5 Pet., 1. So all Spanish grants "were made subject to the rights of Indian occupancy. They did not take effect until

*that occupancy had ceased,* and whilst it continued it was not in the power of the Spanish governor to authorize any one to interfere with it." Chouteau *vs.* Maloney, 10 How., 239. Hence it is easy to account for the fact that in this case there was no survey and no delivery of possession.

The Indian title to the lands in controversy was not extinguished until the year 1818. At that time the pretended title of Filhiol had long since lapsed, because it was not possible to perfect it after the cession of Louisiana. The grant imposed "upon the United States no obligation to make a title to lands of which the grantee had neither an actual seisin nor a seisin in law." U. S. *vs.* Miranda, 16 Pet., 153. "No survey of the land was ever made; the duty imposed upon the grantee to produce the plat and demarcation
89 in proper time was never performed. This was a condition he assumed upon himself. The execution and return of the survey to the proper office in such case could only sever the land granted from the public domain. No particular land having been severed from the public domain, * * * his was the familiar case of one having a claim on a large section of the county unlocated. * * * In grants of land with uncertain designations, to be made on a large district of country, they must have been severed from the public domain by survey or be void for want of identity." *Id.*, Carondelet *vs.* St. Louis, 1 Black, 179. In Scull *vs.* U. S., 98 U. S., 419, it was held that in suits brought to enforce rights growing out of Spanish claims the plaintiff must show "a title completed under the foreign governments, evidenced by written grant, actual survey, or investiture of possession."

See also U. S. *vs.* Hughes, 13 How., 1; U. S. *vs.* Boisdore, 11 How., 92.

Not only must there have been an actual survey by metes and bounds, but the grant itself, "with the memorials and other papers, whatsoever they might be, which had induced the governor to make the grant," must have been registered in the land office. Chouteau *vs.* Maloney, 16 How., 346. This rule is necessary so "as to make the antedating of any given grant irreconcilable with the proof. Otherwise there can be no protection against imposition and fraud in these cases." U. S. *vs.* Teschmaker, 22 How., 405; U. S. *vs.* Bolton, 23 How., 341; U. S. *vs.* Pico, 22 *id.*, 406; U. S. *vs.* Power, 11 *id.*, 577; U. S. *vs.* Ballejo, 22 *id.*, 416. The same doctrine has been applied to floating claims arising under the New Madrid acts. Hot Springs cases, 92 U. S., 713, and cases there cited. In Fremont *vs.* U. S., 17 How., 554, the court, in
90 speaking of Spanish grants, said:

"These grants were almost uniformly made upon condition of settlement or some other improvement by which the interests of the colony, it was supposed, would be promoted; but until the survey was made no interest, legal or equitable, passed in the land. The original concession granted on his petition was a naked authority or permission and nothing more: but when he had incurred the expense and trouble of the survey under the assurances contained in the concession he had a just and equitable claim to

the land thus marked out by lines subject to the conditions upon which he had originally asked for the grant; but the examination of the surveyor, the actual survey, and the return of the plat were conditions precedent, and he had no equity against the Government and no just claim to a grant until they were performed, for he had paid nothing and done nothing which gave him a claim upon the conscience and good faith of the Government."

In order to avoid the force of these numerous cases learned counsel for plaintiffs favored the court during the argument with plats purporting to indicate the land granted. These were made either by themselves or at their instance. They could only, at best, duplicate the plan or map to which Trudeau refers in his certificate and which is not produced. For this effect they are not even persuasive in the most remote degree. They are based on four assumptions—first, that the hot springs are to be taken as the center of the tract; second, that the lines of the tract must have been contemplated as running east and west and north and south; third, that the tract must have been intended to be laid off in a square, and,
91 fourth, that Trudeau must have intended to lay off the tract and did lay it off as thus indicated. Thus we have a conjectural reproduction of what was only a figurative survey. This is piling conjecture upon conjecture, neither of which is supported by any presumption of law or fact. It is needless to say that such vague speculations cannot be used as muniments of title.

We are referred by counsel for plaintiffs to Strother *vs.* Lucas, 12 Pet., 438, where the court say: "He who would controvert a grant executed by the lawful authority with all the solemnities required by law takes on himself the burden of showing that the officer has transcended the powers conferred upon him or that the transaction is tainted with fraud;" but in this case there is no showing that the acts required by law to be performed, viz., the making of an actual survey on the ground, the certification and approval of the same, the delivery of possession, were ever performed at all.

For the reasons stated the court is of opinion that the grant and survey pleaded by the plaintiff are not admissible in evidence in this cause, and hence the exceptions to them are sustained.

We are now called upon to consider the sufficiency of the demurrer to the complaint. Does the complaint state a *prima facie* cause of action? "When a complaint fails to state a fact which is essential to the cause of action, objection to it should be taken by demurrer." Flagg *vs.* Martin, 53 Ark., 453; Wilson *vs.* Spring, 38 Ark., 181.

The court is of the opinion that the demurrer should be sustained for the following reasons:

92 1. The claim is barred under the act of Congress of May 26th, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims." 4 Stat. at Large, 52. This act permitted all persons claiming under French and Spanish grants to file petitions in various courts therein designated in order to have their titles confirmed. The 5th section is as follows:

"And be it further enacted that any claim to lands, tenements, or hereditaments within the purview of this act which shall not be brought by petition before the said courts within two years from the passing of this act, or which, after being brought before the said courts, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within three years, shall be forever barred, both at law and (in) equity, and no other action, at common law or proceeding in equity, shall ever thereafter be sustained in any court whatever in relation to said claims."

In respect hereof our attention is invited by counsel for the plaintiffs to the case of U. S. — Percheman, 7 Pet., 90. But in that case the commissioners had no power save to report to Congress. They were not, as the court declared, "a court exercising judicial power and deciding finally on titles."

This act was several times extended, the last time for five years by act of June 17th, 1844. 5 Stats. at Large, 676.

It does not appear from the complaint that Filhiol or any of his heirs or grantees ever complied with the terms of this act. But counsel for plaintiffs say that the act in question can have
93 no application to perfect titles. Conceding that to be so, we cannot find that the claim sued upon was at any time a perfect title. In fact it lacked almost every essential element of perfection. We can only use the words of the Supreme Court:

"Claimant calls this a grant, and it is his privilege to do so, but it is in vain for him to expect that this court can give its sanction to any such manifest error." U. S. *vs.* Castillero, 2 Black, 163.

2. The claim is barred by the act of Congress known as the Hot Springs act.

Under the provision of the act of June 11, 1870 (16 Stat., 149), all persons claiming title, either legal or equitable, "to the whole or any part of the four sections of land constituting what is known as the Hot Springs reservation, in Hot Springs county, in the State of Arkansas," had an opportunity to institute suit, in the nature of a bill in equity, against the United States, in the Court of Claims, "and prosecute to final decision any suit that may be necessary to settle the same: Provided that no such suits shall be brought at any time after the expiration of ninety days from the passage of this act, and all claims to any part of said reservation upon which suit shall be not brought under the provision of this act within that time shall be forever barred."

No valid reason can be shown why this statute did not apply to the Filhiol claim as well as to other claims. There is an alleged loss of the grant and survey, but that would not suspend or change the effect of the statute. In no case is the running of a statute of limitation suspended by causes not mentioned in the act
94 itself. Braun *vs.* Sauerwein, 10 Wall., 218; Montgomery *vs.* Hernandez, 12 Wheat., 129; Erwin *vs.* Turner, 6 Ark., 14; State Bank *vs.* Morris, 13 *id.*, 291; Pryor *vs.* Ryburn, 16 *id.*, 671; Smith *vs.* Macon, 20 *id.*, 18; R'y Co. *vs.* B'Shears, 59 *id.*, 244.

3. After so great a lapse of time the claim, if originally valid, must be considered as having been abandoned. In U. S. *vs.* Hughes,

13 How., 3, a delay of forty years to bring suit to enforce a Spanish claim was held to be fatal. In U. S. *vs.* Philadelphia, 11 How., 652, a delay of forty years was held to be a constructive abandonment. In Fuentes *vs.* U. S., 22 How., 460, the court came to the same conclusion, though the delay could not have been for more than fifty years. In U. S. *vs.* Repentigny, 5 Wall., 211, an abandonment was presumed from a delay to bring suit for more than a hundred years, during which time the claimants had been in possession for more than four years. In U. S. *vs.* Moore, 12 How., 222, the same presumption was raised where the plaintiffs had delayed to sue for nearly fifty years. In Valliere *vs.* U. S., Hempst., 338, the same presumption was indulged where the delay was for more than fifty years.

It does indeed appear that the heirs of Filhiol brought a suit for confirmation in the name of James Ball as assignee in the superior court of Arkansas Territory, under the act of May 26th, 1824, which was pending at the time that the various suits on the forged grants mentioned in Sampeyrac *vs.* U. S., *supra*, were also pending; that a question of forgery in the Ball case was also raised, and that on a rule being made by the court for the production of the original papers and on non-compliance therewith the suit was dis-
95 missed (Frauds in Land Titles in Arkansas, 5 Am. State Papers, 365, 364, 366, 430, 338); but this is certainly no adequate showing of diligence. The American State Papers, having been published under authority of law, are evidence of whatever they contain. Watkins *vs.* Coleman, 16 Pet., 50, 55; Bryan *vs.* Forsyth, 19 How., 334.

I could not but be more or less impressed in passing on the exceptions with the circumstances that both the survey and the grant are apparently written by the same hand on the same kind of paper and with the same ink; that both contain words badly spelled and ungrammatical phrases, showing that they were gotten up by illiterate persons, and that though the grant purports to be attested by the armorial seal of the governor, yet there is no impression of a seal of any kind, but merely a seal of wax, evidently made to adhere to the paper by the application of some smooth surface.

It is said by counsel for plaintiffs that by the Spanish law no seal was required to such a grant as this, and that a flourish at the end of the signature, such as appears in this instance, might be used instead. Conceding this to be so, it is still singular that the grant should explicitly state that it was "sealed with the seal of our arms," and that a blank seal should be attached.

The alleged long loss of the papers "artistically described in the testimony," as was said in a case growing out of a like grant (in U. S. *vs.* Castillero, 2 Black, 185), seemed also to be a suspicious circumstance. In U. S. *vs.* Vallejo, 1 Black, 541, it was held that "a false note of the attesting secretary at the bottom of the grant that it had been registered is a serious objection to the claim
96 under it." A like note appears at the bottom of the grant in this case, though there is no pretense that the grant was ever registered.

It would be a mere affectation to pretend that thoughts of this kind, growing out of the well-known history of Spanish claims in Arkansas, have not intruded themselves on the mind of the court. Indeed, they have a certain bearing on the point under consideration, for they afford some very plausible reasons to account for the long delay of the claimants in asserting their rights in the courts, some reason why they twice at an interval of several years importuned Congress for special legislation which might seem to be some sort of a recognition of the validity or at least of the merits of their claim; reasons why they should have brought a tentative suit in the Court of Claims for rents on these lands, and why eventually, after the lapse of so long a time, after the death of all witnesses who knew anything about the matters in dispute, final resort should be had to this court. But, though this view of the case has been pressed in argument, the court does not find it necessary to do more than advert to it for the sole purpose of vindicating the principles of law involved in this controversy, the expression of the collective wisdom and foresight of generations, which renders success in cases of this sort hopeless.

It must also be conceded that the present suit makes no appeal to our sense of justice. As shown by the facts alleged in the complaint, Juan Filhiol never paid anything for the land sued for. He never paid even the trivial fee necessary to be paid in order to have his grant registered. He never complied with the terms of the grant or with the requirements of the laws in force at the time that,
97 as alleged, the lands were donated to him. The taxes that have accrued on the property covered by the grant during so many years, with accrued interest, must amount to a very large sum, of which it is extremely improbable that the plaintiffs have paid anything.

In 1788 the hot springs were upon lands occupied and owned by a tribe of Indians, and were far from any European settlement. They were in the midst of an unbroken wilderness, and they could be reached from such places as New Orleans or St. Louis only after many days of arduous travel through a country where there were only rude Indian trails instead of roads. Such a journey would have been attended by perils and by every kind of discomfort. It could only be made by men in robust health and in the full vigor of life. Before the application of steam to navigation our watercourses would have impeded rather than assisted the traveller. The country had but few white inhabitants. New Orleans was only a small town, and St. Louis was an obscure village on the extreme margin of the vast and unexplored wilderness stretching from the Mississippi river to the Pacific. Only De Soto, in 1541, and a few later explorers of the white race had ever seen the springs. Their medicinal qualities a hundred and six years ago were unknown, but having been ascertained after the cession in 1818, the United States Government bought up the title of the Indians. In 1832, recognizing the great importance of the springs to the general public, it reserved the property from entry and sale forever, and for their use it now holds it in trust, if not in deed, for the heirs

of Filhiol. In the meantime, before the commencement of this suit, a thriving and prosperous city had been built up around the springs. The Federal Government had spent large sums for
98 hospitals and in improving and beautifying its property. By the joint labor and money of private citizens, the municipality, and the Federal Government, streets had been laid our, parks had been established, churches and school-houses had been erected, and railway connections with the rest of the continent had been created. In hotels alone provision had been made for guests and for the travelling public at an expense of millions of dollars. Many of the citizens and others have made these investments largely because they supposed that the springs themselves would be perpetually under the control of the Federal Government and would be managed with its usual fairness and generosity. If they should be decreed to be private property, the event would simply be a public and private calamity of incalculable magnitude. They would become an unending monopoly, their control the subject-matter for greed, avarice, selfishness, extortion, and all the whims and caprices of private individuals, under no responsibilty to the public; owners who might, if they thought fit, wholly exclude others from the healing waters or impose such conditions upon access to them as would be intolerable. The plaintiffs, however, after so long a delay, during which time they have never spent a cent in the great work of making these many enduring and costly improvements, now ask that they may reap where they have not sown. But it has often been held that if one sees another making costly improvements on his lands, believing them to be his own, without any assertion of title, he will be estopped from claiming an adverse title. Erwin *vs.* Lowry, 7 How., 172; Kirk *vs.* Hamilton, 102 U. S., 68; Close *vs.* Glenwood Cemetery, 107, *id.*, 466; Jowers *vs.* Phelps, 33 Ark., 465. No stronger case than the present as coming within this principle is likely to occur.

99 On the ground stated the demurrer to the complaint is sustained, and an order will be entered that, unless the plaintiffs amend within thirty days from this date, this suit shall be dismissed.

100 UNITED STATES OF AMERICA, }
*Western Division of the Eastern District of Arkansas.* }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office, and constitute a true copy of the record and of the assignment of errors and of all proceedings in case of Margaret A. Muse *et al. vs.* Arlington Hotel Company.

The Seal of the Circuit Court, U. S. A., Western Division of East. Dist. Ark.

In witness whereof I have hereunto set my hand and the seal of said court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and nineteenth.

Attest: RALPH L. GOODRICH, *Clerk.*

101 U. M. Rose. W. E. Hemingway. G. B. Rose.

Rose, Hemingway & Rose, attorneys-at-law, 314 West Markham street.

LITTLE ROCK, ARK., —— —, 189–.

In the Supreme Court of the United States.

MARGARETE A. MUSE *et al.*, Plaintiffs in Error,
*v.*
ARLINGTON HOTEL CO., Defendant.

It is hereby stipulated that in printing the transcript in this cause the photographs included in the record shall be omitted.

This Dec. 9, 1895.

E. W. RECTOR,
DAN. W. JONES,
W. S. McCAIN,
C. J. BOATNER,
*For Plaintiff- in Error.*
U. M. ROSE,
G. B. ROSE,
*For Defendant in Error.*

102 [Endorsed:] Case No. 16,031. Supreme Court U. S., October term, 1895. Term No., 741. Margaret A. Muse *et al.*, P. E., *vs.* Arlington Hotel Company. Stipulation to omit photographs from record in printing. Filed Dec. 12, '95.

103 Know all men by these presents that we, Margaret A. Muse *et al.*, as principals, and S. L. Crissey and Alex. R. Mullowny, as sureties, are held and firmly bound unto the Arlington Hotel Company in the full and just sum of five hundred dollars, to be paid to the said The Arlington Hotel Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a circuit court of the United States for the eastern district of Arkansas, in a suit depending in said court

between Margaret A. Muse *et al.*, plaintiffs, and The Arlington Hotel Company, defendant, a judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said plaintiffs shall prosecute said writ to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) S. L. CRISSEY. [SEAL.]
(Signed) A. R. MULLOWNY. [SEAL.]

Sealed and delivered in presence of—
(Signed) DANIEL WILLIAMS.
(Signed) CHARLES B. ELLIOTT.

In pursuance of the order of court of March 16, 1896.
Approved by—
(Signed) JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

17th March, 1896.

104 WASHINGTON CITY, } ss:
*District of Columbia,* }

This 27th day of December personally appeared before me, Joseph Harper, a notary public in and for the District aforesaid, S. L. Crissey and A. R. Mullowny, who, being first duly sworn according to law, depose and say that they are each worth the sum of five hundred dollars in property subject to execution over and above all their debts, liabilities, and exemptions.

(Signed) S. L. CRISSEY.
(Signed) A. R. MULLOWNY.

Subscribed and sworn to before me this 27th day of December, 1895.

[SEAL.] (Signed) JOSEPH HARPER,
*Notary Public.*

DISTRICT OF COLUMBIA, ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, the same being a court of record, do hereby certify that Joseph Harper, Esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof and acknowledgment a notary public in and for said District, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgments and proofs of deeds or conveyances for land,

tenements, or hereditaments, and administer oaths in said District; and, further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of Washington, D. C., [SEAL.] the 27th day of December, A. D. 1895.

(Signed) J. R. YOUNG, *Clerk*,
(Signed) By M. A. CLANCY.
*Assistant Clerk.*

105 [Endorsed:] Case No. 16,031. Supreme Court U. S., October term, 1895. Term No., 741. Margaret A. Muse *et al.*, P. E., *vs.* The Arlington Hotel Co. Writ of error bond. Filed March 17, 1896.

Endorsed on cover: Case No. 16,031. E. Arkansas C. C. U. S. Term No., 341. Margaret A. Muse, Hippolite Filhiol, Francis J. Watts, *et al.*, plaintiffs in error, *vs.* The Arlington Hotel Company. Filed September 24th, 1895.